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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1963

Nos. [redacted] 83

NORTHERN NATURAL GAS COMPANY, a Corporation, and CITIES SERVICE GAS COMPANY, a Corporation, *Appellants*,

vs.

STATE CORPORATION COMMISSION OF THE STATE OF KANSAS, SOUTHWEST KANSAS ROYALTY OWNERS ASSOCIATION and PANHANDLE EASTERN PIPE LINE COMPANY, *Appellees*.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF KANSAS.

JOINT JURISDICTIONAL STATEMENT OF NORTHERN NATURAL GAS COMPANY AND CITIES SERVICE GAS COMPANY, APPELLANTS

CONRAD C. MOUNT
CHARLES V. WHEELER
*GEORGE E. PEABODY
P.O. Box 1995
Oklahoma City, Oklahoma
*MARK H. ADAMS
MARK H. ADAMS, II
503 Colorado Derby Building
Wichita, Kansas
Attorneys for Appellant, Cities Service Gas Company

F. VINSON ROACH
JACK C. OSBORNE
*PATRICK J. McCARTHY
2223 Dodge Street
Omaha, Nebraska
*MARK H. ADAMS
MARK H. ADAMS, II
JOE ROLSTON
503 Colorado Derby Building
Wichita, Kansas
Attorneys for Appellant, Northern Natural Gas Company

*Attorneys upon whom service should be made.

F. L. MENDENHALL, Inc., 1108 Oak Street, Kansas City, Mo. 64106 HArrison 1-9030

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JOINT JURISDICTIONAL STATEMENT OF NORTHERN NATURAL GAS COMPANY AND CITIES SERVICE GAS COMPANY, APPELLANTS

Appellant, Northern Natural Gas Company (hereinafter sometimes referred to as Northern), appeals from

three judgments of the Supreme Court of Kansas made final January 3, 1964,[1] that upheld as valid numerous orders of the Corporation Commission of that State which, under the guise of prorating the production of natural gas in the Kansas Hugoton Gas Field, had the operative effect of controlling appellant, a "natural-gas company," in its purchases of natural gas from said field for transportation and resale in interstate commerce, contrary to the rule of law laid down by this Court in *Northern Nat. Gas Co. v. State Corp. Com.*, 372 U.S. 84, 9 L. Ed. 2d 601, 83 S. Ct. 646, decided February 18, 1963, reh. den. 372 U.S. 960, 10 L. Ed. 2d 14, 83 S. Ct. 1011.

Appellant, Cities Service Gas Company (hereinafter sometimes referred to as Cities), al a "natural-gas company" purchaser, appeals from two[2] of said judgments of the Supreme Court of Kansas.

Since both cases involve identical or closely related questions, appellants submit herewith this single jurisdictional statement covering all such appeals as authorized by Paragraph 3 of Rule 15, and Rule 46 to show that this Court has jurisdiction of the appeals and that a substantial federal question is presented.

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1. Judgment of the Supreme Court of Kansas in Case No. 41,515, etc. reversed two judgments of the District Court of Finney County, Kansas. The second and third judgments of the Supreme Court in Case No. 42,175, etc. (consolidated) and No. 42,038 respectively reversed the judgment of the District Court of Finney County, Kansas, and affirmed the judgment of the District Court of Stevens County, Kansas (although such lower Court judgments dealt with exactly the same subject matter).

2. Judgments here referred to are those entered in Case No. 42,175, etc. (consolidated) and No. 42,038, in which the Supreme Court of Kansas stated the questions presented therein were determined by such Court in its opinion and judgment in Case No. 41,515, etc.

OPINIONS BELOW

The opinion of the Supreme Court of Kansas covering the first group of such orders in Cases Nos. 41,515, 41,516, 41,555 and 41,556, is reported in 192 Kan. 1, 386 P.2d 266.[3] Such Court did not render an opinion denying rehearing therein, but entered an order thereon.[4] No opinion was rendered by the trial court.[5] The orders of the Kansas Corporation Commission involved in these cases are numerous and unreported, but such copies thereof as fairly and correctly illustrate Kansas Commission action thereunder are attached hereto.[6]

The opinion of the Supreme Court of Kansas covering the second group of such orders in Cases Nos. 42,175, 42,176, 42,185, 42,230 (consolidated), and 42,038, is reported in 192 Kan. 29, 386 P.2d 288.[7] Such Court did not render an opinion denying rehearing therein, but entered an order thereon.[8] The trial court did not render an opinion therein.[9] The orders of the Kansas Corporation Commission involved in these cases are numerous and unreported, but such copies thereof as fairly and correctly illustrate Commission action thereunder are attached hereto.[10]

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3. Attached hereto as Appendix "A". (From the judgment entered herein, Northern is appealing.)

4. Attached hereto as Appendix "B".

5. The judgments entered by the trial court are attached hereto as Appendices "C" and "D".

6. Attached hereto as Appendix "E".

7. Attached hereto as Appendix "F" (From the judgments entered herein, both Northern and Cities are appealing.)

8. Attached hereto as Appendix "G".

9. The Judgment of the Trial court is attached hereto as Appendix "H".

10. Attached hereto as Appendix "I".

JURISDICTION

Actions were brought by appellant, Northern Natural Gas Company, in the District Court of Finney Company, Kansas, under G.S. 1949, 55-707 and 55-606, to review and set aside both groups of such Commission orders. Such petition for judicial review[11] relating to the period from May 1, 1956 through November, 1957, was sustained by the District Court of Finney County, Kansas judgment[12] setting aside said Commission orders and the appeal therefrom to the Kansas Supreme Court was above numbered case 41,516. Notices of appeal from such trial Court judgment to the Supreme Court of Kansas were served and filed February 12, 1959, or prior thereto, as provided by G.S. 1949, 60-3306, 3309.

Typical of the petitions for judicial review of appellant Northern Natural Gas Company filed in the District Court of Finney County, Kansas, covering the period from December 1, 1958 through March 31, 1959, inclusive, is that filed in District Court No. 10,611[13] which was sustained by such Court judgment[14] setting aside said Commission orders, and the appeal from such judgment constituted Case No. 41,556 in the Supreme Court of Kansas. Notices of appeal from such trial Court judgment to the Supreme Court of Kansas were served and filed April 2, 1959, as provided by G.S. 1949, 60-3306, 3309. The judgment in Case No. 41,515, etc., deals solely with Kansas Commission's first group of orders including all of those covering the period from April 1, 1956 to March 31, 1959.

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11. See Appendix "J".
12. Attached hereto as Appendix "C".
13. Attached hereto as Appendix "K".
14. Attached hereto as Appendix "D".

The second group of Commission orders involved cover the monthly periods from October 1, 1959 through March 31, 1960.[15] Petitions for judicial review of such Commission's orders were timely filed with respect to each as the same were issued. Typical of such judicial review petitions were those filed respectively by appellant Northern Natural Gas Company[16] and by appellant Cities Service Gas Company[17] with respect to the Kansas Commission's October 1959 Allowable Order. The District Court of Finney County, Kansas, entered judgment[18] sustaining as valid said Commission orders on May 26, 1960. Appellants' motions for a new trial were filed, served, considered by the trial court and overruled on the same date the judgment was entered.[19] Notices of appeal to the Supreme Court of Kansas were filed in the trial court and served by each appellant June 10, 1960, as provided by G.S. 1949, 60-3306, 3309. The second group of such orders was litigated in two forums, both as narrated first, in this paragraph and, at practically the same time, in the District Court of Stevens County, Kansas. The judgment of the District Court of Stevens County involving the second group of such orders for the monthly periods from October 1, 1959 through March 31, 1960, and the market demand order for the same such six months period, was entered March 10, 1960,[20] which judgment affirmed as valid all of

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15. The Statute G.S. 1949, 55-703, upon which all of Kansas Commission's first group of orders was based was amended by the Legislature in 1959, and all of the second group of such orders are based on Statute as amended, G.S. 1961 Supp., 55-703. See Appendix "L", the amendment thereto in 1959 being italicized.

16. Attached hereto as Appendix "M".

17. Attached hereto as Appendix "N".

18. Attached hereto as Appendix "H".

19. *Id.*

20. Attached hereto as Appendix "O".

such orders.[21] Motion was filed and served by appellant Northern to vacate and set aside the court's judgment of March 10, 1960, for other relief, and for a new trial; which was considered by the trial court and overruled effective March 19, 1960.[22] Notices of appeal to the Supreme Court of Kansas were filed in the trial court and served by each appellant, that by Cities on March 17, 1960, and that by Northern on May 3, 1960, as provided by G.S. 1949, 60-3306, 3309.

On November 2, 1963, the Supreme Court of Kansas entered its three judgments, in such two opinions and decisions in both groups of appeals from the trial courts (See Appendix "A" and Appendix "F" hereto). Motions for a rehearing in both cases were filed and served by each appellant and denied by the Court (see Appendix "B" and Appendix "G" hereto). Appellants filed their separate notices of appeal to this Court from each of such judgments sought to be reviewed herein with the Clerk of the Supreme Court of Kansas; Northern on March 25, 1964, with proof of service thereof; and Cities on March 26, 1964, with proof of service thereof.

The jurisdiction of the Supreme Court of the United States to review each of such judgments of the Supreme Court of Kansas and its opinions and decisions therein is conferred by 28 U.S.C. 1257(2), 62 Stat. 929.

Decisions sustaining the jurisdiction of this Court to review such judgments and each of them in these cases are as follows:

Phillips Petroleum Co. v. Wisconsin, 347 U.S. 672, 98 L. Ed. 1035, 74 S. Ct. 794;

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21. See explanation at Footnote 15, Page 5.

22. Attached hereto as Appendix "P".

Natural Gas Pipeline Co. v. *Panoma Corp.*, 349 U.S. 44, 99 L. Ed. 866, 75 S. Ct. 576;

Cities Service Gas Co. v. *State Corporation Commission of Kansas*, 355 U.S. 391, 2 L. Ed. 2d 355, 78 S. Ct. 381;

Northern Nat. Gas Co. v. *State Corp. Com.*, 372 U.S. 84, 9 L. Ed. 2d 601, 83 S. Ct. 646, reh. den. 372 U.S. 960, 10 L. Ed. 2d 14, 83 S. Ct. 1011.

STATUTES INVOLVED

The judgment and opinion of the Supreme Court of Kansas in cases numbered 41,515, 41,516, 41,555 and 41,556, affirmed as valid twenty monthly, from April, 1956 through November, 1957, interim (well allowable) orders of the Kansas Commission, its Report and Order effective February 1, 1958, and its market demand and allowable orders for October, November and December, 1958, and January, 1959.

The judgments and opinion of the Supreme Court of Kansas in cases numbered 42,175, 42,176, 42,185 and 42,230, consolidated, and case number 42,038, affirmed as valid market demand and well allowable orders entered by the Kansas Commission in October, November and December, 1959, and January, February, and March, 1960.

Said orders of the Kansas Commission, having the force and effect of statutes, are unreported; that copies of certain of such orders fairly and correctly illustrative of all of such orders are attached hereto as Appendices "E" and "I".[23]

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23. All similar Kansas Commission orders covering the period intervening between the two group of appeals covered by the Kansas Supreme Court decisions, as well as covering all months subsequent to April 1, 1960, have been timely attacked by judicial

The Kansas Statute G.S. 1949, 55-703, upon which the Orders and Rules were based was amended in 1959 (L. 1959, Ch. 237, Sec. 1).[24]

Statutory and Constitutional provisions upon which appellant relies for reversal of the judgments herein are pertinent provisions of the Natural Gas Act, 15 U.S.C.A. 717, *et seq.*, 52 Stat. 821, *et seq.*, and the Constitution of the United States, Clause 3, Section 8 of Article I, and Clause 2 of Article VI.

QUESTION PRESENTED

Does the State of Kansas have jurisdiction, under the guise of regulating gas production and in the face of the provisions of the Natural Gas Act, to issue purported proration orders for the Kansas Hugoton Gas Field which were intended to and do compel, through operative effect, a "natural-gas company" purchaser therein to materially increase its purchases of gas from said Kansas field for transportation and resale in interstate commerce, thereby requiring said company in its interstate purchasing patterns to prefer the gas reserves in such Kansas field over said company's contractually dedicated reserves in other states, or face substantial loss of its major gas reserves in such Kansas field contractually dedicated to its interstate markets by the diversion thereof to the interstate markets of other purchasers in said field, with possible concomitant increased gas costs to such company's interstate consumers?

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review proceedings in a district court of Kansas, and are being there held for disposition awaiting final determination in these appeals.

24. Appendix "I."

STATEMENT

Appellants Northern Natural Gas Company (hereinafter referred to as Northern) and Cities Service Gas Company (hereinafter referred to as Cities) are each a Delaware corporation, authorized to do business in Kansas, engaged in the business of purchasing natural gas for transportation and sale in interstate commerce for resale for ultimate public consumption, and each is, therefore, a "natural-gas company" within the meaning of the Natural Gas Act, 15 U.S.C.A. 717a. Each company owns and operates an interstate gas pipeline system extending into and from, among other fields, the Kansas Hugoton Field (R. 42,175, Vol. VI, Exhibit 12, p. 59; Exhibit No. 20, p. 93).

Northern's total daily system salable capacity amounts to one billion, two hundred forty-two million cubic feet, with expansion construction now under way; Northern serves a total of three hundred eighty-seven communities and some nine hundred six thousand consumers; the Federal Power Commission has recently issued certificates to Northern covering service to some three hundred forty-two additional communities; the principal sources of gas supply to Northern are the Hugoton Field in Kansas, Oklahoma and Texas, the Texas Panhandle Field in Texas, the several fields in the Permian Basin area of west Texas and southeast New Mexico, and the several fields in the Anadarko Basin area in Texas, Oklahoma and Kansas; at the end of 1958, there was approximately 12.7 trillion cubic feet of gas in place dedicated to be sold to Northern's system, of which 4.9 trillion cubic feet of gas or about thirty-eight per cent of the total reserves so dedicated, were located in the Kansas Hugoton Gas Field; Northern purchases gas in the Kansas Hugoton Field from about

eleven hundred ten wells, to which there is attributed about seven hundred thousand acres; to purchase, gather and transport this gas, Northern has about thirteen hundred miles of pipe line inside the field, ranging from two inch to twenty-six inch in diameter; it has fifty-five thousand horsepower in compression facilities working on Kansas Hugoton gas (R. 42,175, Vol. VI, p. 95).

With respect to Northern's investment in facilities related to the taking of gas from the Kansas Hugoton Field, it has invested some eighteen and one-half million dollars in gathering lines and some four and one-half million dollars in compressor stations located inside the field. In addition, there are three main line compressor stations located near the edge of the field, which represent an additional investment of about thirteen million dollars. This brings the grand total in gathering, compression and related facilities to take the gas from the Kansas Hugoton Field to some thirty-six million dollars. It then follows that the thirty-six million dollar investment amounts to about thirty-three thousand dollars per well for the eleven hundred ten wells connected to Northern's system in said field. This investment includes only the facilities from the wells up through the edge of the field compressor stations, and does not include the investment outside of the field made to move the gas into the consumer market (R. 42,175, Vol. VI, pp. 95-96).

Northern has continually engaged in the expansion of its system to serve new customers and to serve the increased needs of existing customers; the gas reserves dedicated to Northern's system in the Kansas Hugoton Field are and have always been the most important segment of its total gas supply; gas reserves in sufficient quantities to assure continuation of adequate service to the consumers has always been a prerequisite, even before regulation by

the Federal Power Commission, not only to satisfy investors and bond holders, but also for good business reasons. Since regulation by the Federal Power Commission under the Natural Gas Act, the importance of gas reserves has been highlighted by the Federal Power Commission requirements that an adequate supply of gas must be shown to support expansion before a certificate of public convenience and necessity will issue. In granting such certificates to expand Northern's system, many of which have been granted to it over the years, the Federal Power Commission has relied upon Northern's gas dedicated reserves in the Kansas Hugoton Gas Field (R. 42,175, Vol. VI, p. 96).

With respect to the pipe line system of Cities, there are markets on its system which cannot be served from the Kansas Hugoton Gas Field. It has other markets which could be served exclusively with Kansas Hugoton gas; there are certain of its markets which might be served with Kansas Hugoton gas but where it would not be economically feasible to do so under the present capacity or operating conditions under which Cities' pipe line system must be operated. To illustrate, Cities has a large diameter gas line running from the Amarillo, Texas, gas field to Ottawa, Kansas, which was constructed in 1928 or 1929 —prior to any development in the Kansas Hugoton Field. The company also has a large diameter pipe line running from the Texas Panhandle field south from Blackwell, Oklahoma, to Oklahoma City, which was constructed in 1930 or 1932 to connect to a large volume of gas. Cities' transmission lines were accordingly constructed prior to the time the company began buying gas in the Kansas Hugoton Field. If the company attempted at this time to construct pipe line capacity to take the allowables assigned by the Commission to the wells in the Kansas Hugoton

Field connected to Cities' pipe line, it would have the effect of reducing the utility or usage of the company's other existing pipe lines and increasing the company's investment there, in turn unnecessarily increasing the cost of delivery of gas to Cities' consumers. If Cities would build additional pipe line capacity to the Kansas Hugoton Gas Field so as to take the full allowables assigned to the wells connected to its pipe line system and take such full Commission allowables thereto, it would have to materially cut off some other major source of supply to which its pipe lines now connect (R. 42,175, Vol. VI, pp. 61-62).

Cities' other major sources of supply include the Oklahoma Hugoton and Texas Panhandle field. Cities has take or pay for gas purchase contracts in fields in Kansas other than Kansas Hugoton. In addition thereto, Cities purchases gas from the area south of Blackwell, Oklahoma, where Cities allocates part of its market to residue gas from gasoline plants (R. 41,515, Vol. I, p. 38). This is gas produced with oil, and it would be vented and lost if not taken (R. 42,175, Vol. VI, p. 56). In order to contract for this kind of gas it is necessary to agree to take all such residue gas as it is available (R. 41,515, Vol. I, p. 38).

Cities takes into consideration three major factors in determining the allocation of its overall market to its main sources of supply, (1) availability of gas; (2) company's contractual obligations to purchase; and (3) pipeline capacity (R. 41,515, Vol. I, p. 38).

In most cases wells connected to Cities' pipe line produce at a higher rate on estimated reserves than do the wells in the Kansas Hugoton Field, it is because of contractual obligations which Cities had to make in order to buy the gas. In some instances, Cities buys gas from wells adjacent to its pipe lines which were drilled for the pro-

duction of oil but found gas instead. In a great many such instances, such wells would be plugged and the gas not produced if Cities did not buy it. Most of the wells (connected to Cities' pipe line in other fields) where the depletion rate is higher than the wells in the Kansas Hugoton Field, are deeper and involve more expense in the drilling and operation thereof. The gas production therefrom is more or less a salvage operation (R. 42,175, Vol. VI, p. 62).

The Hugoton Gas Field comprises one interstate common source of supply of natural gas lying within the boundaries of the states of Texas, Oklahoma and Kansas. It is said to be the largest known reserve of natural gas in the world. The largest portion of the field is located in Kansas. This portion of such field is commonly known as "Kansas Hugoton". The portion in Oklahoma is called "Guymon Hugoton", and that part in Texas, "Texas Hugoton". *Kansas-Nebraska Natural Gas Co.* v. *State Corporation Commission*, 169 Kan. 722, 724, 222 P.2d 704; *Interstate Oil Compact Quarterly Bulletin*, Volume XI, December, 1952, Nos. 3 and 4, page 12, and "*Conservation of Oil and Gas, 1948*" by Mineral Law Section of the American Bar Association, 165-183, 403-408.

While the Hugoton Gas Field is a single interstate common source of supply of natural gas the production in the portion of the field in Texas is, for regulatory purposes, a separate source of supply and regulated by the Railroad Commission of that state. Article 6008, *Vernon's Annotated Texas Civil Statutes*, 10 through 22; Articles 6008a-2, 6049c-7 and 6049d-4. Production in that portion of said field in Oklahoma is also, for regulatory purposes, a separate common source of supply and regulated by the Corporation Commission of that state under 52 *O.S.A.*, Sections 21 through 35, 231 through 233 and 236 through 247. Production in the portion of the field in Kansas is also, for

regulatory purposes, a common source of supply and is regulated by the Corporation Commission of Kansas under *G.S. 1949, 55-701* through *713* and *G.S., 1961 Supp., 55-703, 706* and *711*.

The sole purchasers of gas produced in the Kansas Hugoton Field, or, in other words, that portion of the Hugoton Field in Kansas, are Cities Service Gas Company, Colorado Interstate Gas Company, Hugoton Production Company, Kansas-Colorado Utilities, Inc., Kansas-Nebraska Natural Gas Company, Inc., Northern Natural Gas Company, Panhandle Eastern Pipe Line Company, Quinque Oil and Gas Producing Company, United Carbon Company, and Shallow Water Refining Company (R. 42,175, Vol. VI, pp. 162-163).

The pipe line companies whose lines extend into the Hugoton Gas Field do not all extend to all interstate portions of the field. Some extend only to the "Texas Hugoton" portion of said field, while others extend to the "Guymon Hugoton" portion, and still others to the "Kansas Hugoton" portion of said field (R. 42,175, Vol. VI, pp. 45, 59, 77, 93). The same pipe line company purchasers not being the same in all portions of said Hugoton Field, the market demand for gas from each separately regulated portion of said Hugoton Field, by necessity, is not the same, and the market demand and production of gas from the Oklahoma portion, the Texas portion and the Kansas portion may be greater or lesser in proportion to potential production due to the variation in the respective pipe line purchasers' requirements for gas therefrom.[25]

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25. *Champlin Refining Co. v. Corporation Com.*, 286 U.S. 210, 52 S. Ct. 559, 86 A.L.R. 403, 76 L. Ed. 1062. The Oklahoma Supreme Court in *Peppers Refining Co. v. Corporation Commission*, 179 P.2d 899, at 902, adopted this Court's definition of "reasonable market demand", as enunciated in *Champlin, supra*, as meaning

In 1935, the Kansas Legislature enacted a statute entitled *Production and Conservation of Natural Gas* (Laws 1935, Ch. 213), which appears, as amended thereafter, as G.S. 1949, 55-701, *et seq.* Thereafter, and effective March 31, 1944, the State Corporation Commission of Kansas promulgated its Basic Proration Order for the Hugoton Gas Field.[26] Such order prescribed a formula to be used thenceforth by the Commission for the determination of market demand from the Kansas Hugoton Gas Field, and for the spreading of such market demand to the connected wells in the field fairly on the basis of the deliverability of each gas well against a fixed line pressure. Such order, as subsequently from time to time amended, was followed by the Commission from date of promulgation effective March 31, 1944, through the month of April, 1956, a period in excess of twelve years.

In operating their interstate pipe line systems, and as an integral part thereof, each of appellants has, among other things, entered into presently subsisting contracts with certain producers in the Kansas Hugoton Gas Field, for the purchase of natural gas produced in and from said field. Extensive pipe line facilities, compressor stations, etc., involving millions of dollars in investments were required to be and have been built in reliance on such contracts and the dedicated reserves covered thereby to take gas

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"the amount of oil the purchasers will buy regardless of how much the industry actually needs and irrespective of the reasonable consumptive demand of this state or of the nation. That is the interpretation placed upon these words by the court in *Corporation Comm. of State of Oklahoma* v. *Champlin Refining Co.*, * * * at page 1076, 86 A.L.R. 403 wherein it is said: 'the same pipe lines and purchasers did not serve or take oil from all the pools, and in some the reasonable market demand was greater in proportion to potential production than in others.'"

26. Attached hereto as Appendix "Q".

from the field to the various and diverse markets many miles distant. Such investments are only justified and can only be financed when there are adequate contracted-for gas reserves to be transported through such facilities upon production. Reliance on such contracted reserves is, therefore, paramount (R. 42,175, Vol. VI, pp. 95-96).

Of the total deliverability (which is determined under the terms of the aforementioned Basic Proration Order) of the wells in said Kansas Hugoton Gas Field, Northern's percentage of such deliverability is approximately 25 per cent. and Cities' percentage of such deliverability is approximately 34 per cent of the total (R. 41,515, Vol. I, p. 51).

Paragraph "n" of such Basic Order[27] provides:

> "That there shall be held two market demand hearings for each year. The first hearing shall cover the period from October 1 to March 31, both inclusive, and the second shall cover the period from April 1 to September 30, both inclusive. The allowable period established shall be a calendar month. The Commission shall issue its orders covering each allowable period, and such orders shall be issued on, or near, the first day of the month for which such order is issued."

The term "market demand" in the gas conservation statute, G.S., 1949, 55-703, as amended, considered in its relationship with the phrases "from such common source of supply", and "from any common source of supply", means the total amount of gas which all the purchasers from a common source of supply are willing to buy at established prices at a given time or during a given period. It does not mean the demands of the users of gas, because "from such common source of supply" fixes the market place. It means the demand of the direct purchasers of gas from

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27 Appendix "Q"

that market place. If a pipe line company had only one source of supply, then the volume of its sales would have a direct relationship to its demand upon that supply. But where a pipe line company has more than one source of supply, there is no direct relationship between the volume of its sales and the extent of its demands upon any single source of supply (R. 42,175, Vol. VI, pp. 33-35).

Proration is the allocation of the market demand to the wells. Proration is an equitable distribution of the amount of gas that can be sold from all of the developed leases within a common source of supply. The Commission has fulfilled its obligation when it finds that it has jurisdiction and it establishes the rules under which the market is to be allocated and its staff allocates that market (R. 42,175, Vol. VI, p. 49).

From the date of the inception of the Basic Order for the Kansas Hugoton Field on March 31, 1944, and through and inclusive of the proration order for the month of April, 1956, the method of proration exclusively followed by the Kansas Commission was to adjust the summation of the purchasers' nominations (their estimates of market demand from month to month) by the difference between cumulative allowables and cumulative production at the end of the preceding month. If the field as a whole were over-produced (that is, production had been in excess of the prior month's allowables as a whole), then the *amount of such over production was added* by the Kansas Commission to the nominations. If the field as a whole were underproduced then *the amount of such under-production was deducted* from the nominations. If any under-production had been cancelled at the end of the preceding month, such under-production was in turn added to the nominations. (Under-production and cancellation thereof, is provided for in paragraph "p" of the Basic Order.[28]

28 Appendix "Q"

The direct result of this procedure for over twelve years was that total field allowables and total field production on a cumulative basis were always in near balance (R. 42,175, Vol. VI, pp. 107-108).

For any proration period, the allowables granted to the field as a whole, were never, during this 12-year period, more than or less than the total runs from the field in any substantial amount. However, beginning in May, 1956, the Kansas Commission departed from the historic method of prorating the field, and since that time its determinations of market demand have exceeded both the nominations and actual production or runs from the field. *Furthermore, instead of deducting under-production for preceding months, the Commission commenced adding such under-production to the current month's allowables.* That is, after its determination of market demand for the six months' period, which since May, 1956, has always been in excess of nominations and actual production, the Kansas Commission allocated such determination of market demand upon a month by month basis within the period, and to each month's current allowables it added the preceding month's amount of underage, rather than deducting such underage as before (R. 42,175, Vol. VI, pp. 107-108).

During the months of May, June and July, 1956, said Kansas Commission by "Interim" order for each month, arbitrarily increased by about 25 per cent the total nominations of the purchasers from said field for such month, which resulted in the fixing and spreading of a "market demand" for gas from said field in excess of the amount actually purchased from said field during such three months' period by about 10 billion cubic feet (R. 41,515, Vol. V, pp. 46, 69, 77). This resulted in the creation of an underage in allowed production of about 10 billion cubic feet, which was chargeable to those wells in the field connected to a pur-

chaser whose market demand would not permit the taking of such gas, which threw proration in said field out of balance to that extent as of the end of the proration period in August, 1956.

During the months from August, 1956 to November, 1957, inclusive, the Kansas Commission entered its monthly "Interim proration orders" purporting to find the market demand for each month as equal to the market demand of the purchasers of gas, but *adding* the underages in "allowed production" which had been theretofore granted to such field and the wells therein, all with the result that the allowables for gas from the Kansas Hugoton Gas Field were constantly in excess of the actual market demand therefrom (R. 41,515, Vol. V, pp. 82, 91, 101, 106, 111, 116, 121, 126, 134, 140, 145, 150, 155, 160, 168, 172). The Kansas Hugoton Gas Field thereafter, and as a direct result of such Commission action and "Interim proration orders," continued to incur a greater underproduced status until at the end of October, 1957, such underproduced status was about 50 billion cubic feet of gas (R. 41,515, Vol. V, pp. 170-171, 199).

Each of the so-called "Interim orders" was not issued until some time after its date and irrespective of when dated, long after the commencement of the particular month when purported to be applicable. Accordingly the May, 1956 order was not issued until May 17, the June order on June 20, the July order on July 14, the August order on August 29, the September order on September 22, the October order on October 23, the November order on November 24, the December order on December 20, the January, 1957 order on January 23, the February order on February 23, the March order on March 21, the April order on April 17, the May order on May 25, the June order on June 27, the July order on July 31, the August order on

August 28, the September order on October 2, the October order on November 27, and the November, 1957 order on January 14, 1958.

Thereafter, and on January 30, 1958, the Kansas Commission issued its report and order dated January 23, 1958, but effective February 1, 1958, which affirmed and declared to be final the Kansas Commission's interim proration orders for the months of May, 1956 through and inclusive of November, 1957.[29] This "report

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[29] 29. The Kansas Commission has been, during all times pertinent herein, publicly committed to a policy of attempting to force interstate purchasers to increase their purchases of volumes of gas from the Kansas Hugoton Gas Field in interstate commerce for resale. See paper of Richard C. Byrd, Commissioner and subsequently Chairman of the Kansas Corporation Commission, entitled *Contractual and Property Rights as Affected by Conservation Laws and Regulations*, published in 10th Annual Institute on Oil and Gas Law and Taxation by the Southwestern Legal Foundation, Dallas, Texas, at page 1, and particularly pages 13 through 15 (cited in *Northern Nat. Gas Co.* v. *State Corp. Com.*, 372 U.S. 84, 9 L. Ed. 2d 601, 83 S. Ct. 646, footnote 12).

In Kansas Commission order effective February 1, 1958 (copy of which is attached as Appendix "E-3" hereto) Chairman Beatty of said Commission in his specially concurring opinion states:

> "Intervenors have urged us to continue the practice of setting high monthly allowables which was started by the Commission in April, 1956. They have asked us to increase the allowables 25% more even though the Commission since April, 1956, has been allowing somewhat more than the market actually absorbed. This benefited pipeline companies in need of gas, usually those overproduced. It was coercive on those who did not have proportional markets, those usually underproduced. It has not been effective so far, but if and when it has the *intended effect of forcing higher takes*, it will allow the producers and royalty owners to convert their minerals into cash more quickly. The only visible results in the last nineteen months, however, have been no increase in takes and a gradually mounting net underage." (p. A70) (Emphasis supplied).

In Kansas Commission hearing September 25, 1959, in propounding a question to witness Steve Ford, Commissioner Byrd stated

and order" purported to establish a complete change in Kansas Commission's former practices and procedures of proration and gas production in the Kansas Hugoton Gas Field, and provided that the Kansas Commission in the determination of market demand for gas from such field would give effect to (a) the takes of gas from other sources of supply to which the purchasers from such field are connected, including fields outside the state of Kansas; (b) the total markets, wherever located, for natural gas of all the purchasers of gas from such field; (c) the rate of increase of the total markets of such purchasers compared to the rate of increase in their takes of gas from such field and, (d) the takes from other sources of supply in Kansas by such purchasers (R. 41,515, Vol. V, pp. 176-196).

As an obvious and inevitable result, the field, as a whole, has steadily accumulated underproduction until, as of July 31, 1959, the total field underproduction as carried on the Commission schedules, was 125,229 billion cubic feet. This means that this amount has been granted to the field as allowable in excess of what has actually been produced. In addition, since May, 1956 to July 31, 1959, the Commission, under paragraph "p" of the Basic Proration Order[30] has cancelled in excess of 24 billion cubic feet of underproduction (R. 42,175, Vol. VI, p. 103, Ex. 22, and p. 106).

Northern has had underage (Commission allowables in excess of the actual market demand) cancelled from wells connected to its system during the last twelve months

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"Mr. Ford, I presume you understand the Commission had two objectives in mind. One was, maybe erroneously, to restore the actual proration of this field in the hands of the Commission instead of the pipe line companies, and second, *and probably more important*, was to increase the rate of production." (Emphasis supplied) (R. 42,175, Vol. VI, p. 48)

30 See Appendix "Q"

prior to October, 1959, in excess of 24 billion cubic feet. As underages in production were cancelled, the Commission respread such cancelled underages to all of the wells in the field. In August, 1959, the cancelled underages respread amounted to 6 billion cubic feet. This was added to the 27 billion cubic feet nominated by purchasers for August, with the result that the Commission fixed the current allowable for the field for August, 1959, at 33 billion cubic feet. To this the Commission added the approximately 125 billion cubic feet of uncancelled underages carried forward from preceding months and fixed the August net allowable for the field as a whole at approximately 158 billion cubic feet. As the Commission computed it the August, 1959, net allowable for the Kansas Hugoton Field is in the order of six times greater than the August, 1959, nominations for gas from said field by the purchasers therein (R. 42,175, Vol. VI, p. 106).

The only way this accumulated under-production can be made up is for the Commission to use it to reduce the total volume of purchaser nominations until the accumulated under-production has been consumed. Any steps taken to bring the field as a whole back into balance would protect correlative rights. If the under-production is not eliminated, there will be substantial cancellation of underages (R. 42,175, Vol. VI, p. 109). When allowables are adjusted to runs, the field is in balance; when they are not, the field is out of balance. Under the historic method the field is never out of balance in any appreciable amount (R. 42,175, Vol. VI, pp. 110, 111).

The Oklahoma portion of the Hugoton Field was developed more rapidly and to a higher percent than the Kansas portion (R. 42,175, Vol. VI, p. 151). Prior to 1957, there was no drainage from the Kansas portion into the Oklahoma portion. Rather for about twenty years, gas had

been migrating from Oklahoma into Kansas (R. 42,175, Vol. VI, p. 145). Exhibit No. 48 shows that over a period extending from the last part of 1937 into the first part of 1958 there was a cumulative migration of gas from Kansas to Oklahoma in the amount of 5.572 MMMCF, and during the same period there was a cumulative migration of gas from Oklahoma to Kansas in the amount of 39.777 MMMCF. The net migration was 34.205 MMMCF from Oklahoma into Kansas (R. 42,175, Vol. VI, Ex. 48, pp. 159, 161).

Gas reserves dedicated to Northern in the field have always been the most important part of its total gas supply. Sufficient quantities of such reserves are necessary to assure continuation of adequate service to consumers, even before regulation by the Federal Power Commission, to satisfy investors and bondholders. The Federal Power Commission requires that an adequate supply of gas must be shown to support expansion of facilities before a Certificate of Public Convenience and Necessity will be issued. The Federal Power Commission has relied upon Northern's dedicated gas reserves in the Kansas Hugoton Gas Field in granting it certificates to expand its system (R. 42,175, Vol. VI, p. 96). Cities Service has purchased all of the gas it could from the Kansas Hugoton Gas Field, considering all of the factors that entered into where the gas had to come from and its purchases on an annual basis are very close to the maximum carrying capacity of its pipeline. It could not take any more without increasing that capacity (R. 42,175, Vol. VI, pp. 61-63).

The Kansas Commission promulgated its market demand Report and Order dated November 10, 1959, finding that nominations for the six-months period were 277,801,541 MCF (R. 42,175, Vol. VI, p. 164), but setting the market demand for such period at 281 billion cubic feet (R. 42,175, Vol. VI, p. 167). The Kansas Commission promulgated

its October (1959) Allowable Order, on November 20, 1959, setting the total net allowed production of gas from the field for October at 165,309,014 MCF (R. 42,173, Vol. VI, p. 206). The Kansas Commission promulgated its November (1959) Allowable Order under date of December 2, 1959, setting the total net allowed production of gas from the field for November at 179,656,023 MCF (R. 42,175, Vol. VI, pp. 239-240). The Kansas Commission promulgated its December (1959) Allowable Order under date of December 31, 1959, setting the total net allowed production of gas from the field for December at 192,187,033 MCF (R. 42,175, Vol. VI, p. 248). The Kansas Commission promulgated its January (1960) Allowable Order under date of January 27, 1960, setting the total net allowed production of gas from the field for January at 198,303,993 MCF (R. 42,175, Vol. VI, p. 256). The Kansas Commission promulgated its February (1960) Allowable Order under date of February 24, 1960, setting the total net allowed production of gas from the field for February at 199,012,582 MCF (R. 42,175, Vol. VI, pp. 262-267). The Kansas Commission promulgated its March (1960) Allowable Order under date of March 24, 1960, setting the total net allowed production of gas from the field for March at 201,166,542 MCF (R. 42,175, Vol. VI, pp. 270-277).

At the instance and request of the Kansas Commission the Kansas Legislature amended G.S. 1949, 55-703, by Laws 1959, Ch. 237, Sec. 1, effective June 30, 1959.[31] Such amendment modified the previous statute in three particulars without changing the fundamental purpose of the statute to cause ratable production between all wells in the field. These particulars follow hereafter by reference to the italicized portion of the following quotes:

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31 Appendix "L"

"The commission shall so regulate the taking of natural gas from any and all such common sources of supply within this state as to prevent the inequitable or unfair taking from such common source of supply by any person, firm or corporation, and to prevent unreasonable discrimination *in favor of any one common source of supply as against another and* in favor of or against any producer in any such common source of supply."

* * *

"*Provided, however*, that the daily takes of gas from any well *in an unprorated gas pool* shall not exceed twenty-five percent (25%) of its open flow."

* * *

"*The commission in determining the market demand for gas from a common source of supply shall consider the reasonable current requirements for current consumption and use within and without the state, and such other factors, conditions, or circumstances that would aid in establishing the market demand.*" (Emphasis supplied).

The only real differences between the record having to do with the market demand period from October 1, 1959, through March 31, 1960, and the record in the first series of appeals are the foregoing amendments to the statute, and the fact that by the end of February, 1960, the last available figures in this record, the underages (allowables granted in excess of market demand) being carried on the Kansas Commission's schedules, was approximately 152,188,242 MCF plus underages cancelled by that date which had amounted to approximately 32 billion cubic feet.

HOW THE FEDERAL QUESTION IS PRESENTED

In its petitions filed in the district courts in Kansas for judicial review of the Kansas Commission's orders Northern alleged as grounds for reversal the identical reasons it had placed before the Kansas Commission in its

petitions for rehearing of such orders. Northern alleged that said orders were unlawful, illegal, unconstitutional and beyond the jurisdiction of said Commission for the reasons that each of said orders:

> "(j) * * * casts an unlawful burden upon, impairs and impedes the interstate operations of Petitioner in the purchase, transportation and sale for resale of natural gas taken from said Hugoton Field in Kansas in violation of the commerce clause of the Constitution of the United States and subsisting provisions of the Natural Gas Act, 15 U.S.C.A. 717 *et seq.*
>
> "(k) That the effect (thereof) upon the interstate operations of Petitioner, as a natural gas company, destroys and takes its contract and property rights without compensation in violation of Section 17, Article 2 of the Constitution of the State of Kansas and Sections 8 and 10, Article 1, and the 14th Amendment to the Constitution of the United States." (R. 41,515, Vol. V, p. 207).

In appeals to the Kansas Supreme Court in cases numbered 41,515, 41,516, 41,555 and 41,556, Northern having been successful in its contentions in the district court argued to the Supreme Court of Kansas as appellee "that these orders (the Kansas Commission orders complained of) impose an undue burden upon interstate commerce and violate the Commerce Clause of the Federal Constitution and impinge upon the certificated duties and obligations of Northern Natural Gas Company as a 'natural-gas company' under the terms of the Natural Gas Act (15 U.S.C.A. 717 *et seq.*), and infringe upon the sole jurisdiction of the Federal Power Commission under the said Natural Gas Act."

In its petitions filed in the District Court of Finney County, Kansas, for judicial review of the Kansas Commission's orders, Cities alleged as grounds for reversal the identical reasons it too had placed before the Kansas Commis-

sion in its petitions for rehearing of such orders. Such appellant's allegations were similar in nature and contained the same subject matter as those above quoted.

After Northern and Cities were denied relief in the District Court with respect to the Kansas Commission orders, appeals from which are covered by the opinion of the Supreme Court of Kansas in cases numbered 42,175, 42,176, 42,185, 42,230 (consolidated) and 42,038, they again raised the same federal, constitutional, and statutory issues in their appeals to the Kansas Supreme Court. Such latter Court specifically passed upon the federal questions raised by appellants and denied the validity of the same. In the Syllabus to its opinion prepared by said Court in Cases numbered 41,515, 41,516, 41,555 and 41,556 (192 Kan. 1, 386 P.2d 266), it summarized its holdings in this respect in Paragraph 7 thereof, as follows:

> "The record, covering numerous appeals from judgments of the district court setting aside orders of the Commission fixing production allowables for the Kansas-Hugoton Gas Field, is examined and it is held: (1) the orders were supported by substantial competent evidence; (2) the orders did not violate the provision of G.S. 1949, 55-703, or the Commission's basic order; (3) the orders did not constitute an interference with interstate commerce or invade the province of the Federal Power Commission under the Natural Gas Act; (4) the orders did not violate the due process clause of the Constitution of the United States or impair the obligation of contracts." (See also corresponding parts of the opinion)

In the opinion of said Court in Cases numbered 42,175, 42,176, 42,185, 42,230 (consolidated) and 42,038 (192 Kan. 29, 386 P.2d 288), the Court states:

> "The questions presented by these appeals were determined in *Colorado Interstate Gas Co. v. State Cor-*

poration Comm. (41,515) 192 Kan. 1, 386 P.2d 266 insofar as they challenge the Commission's orders for the reason that they are not supported by a substantial competent evidence; they violate the provisions of the Gas Conservation Act or the Commission's basic order; they constitute an interference with interstate commerce; they invade the province of the Federal Power Commission under the Natural Gas Act, or they violate the due process clause of the United States Constitution or impair the obligation of contracts. Undue repetition will be avoided if we incorporate that opinion here by reference as determinative of the issues mentioned. We do so." (l.c. 31-32, Kan. Reports).

THE QUESTIONS ARE SUBSTANTIAL

These cases bring before this Court questions so closely related to those considered by this Court in *Northern Nat. Gas Co.* v. *State Corp. Com.*, 372 U.S. 84, 9 L. Ed. 2d 601, 83 S. Ct. 646, reh. den. 372 U.S. 960, 10 L. Ed. 2d 14, 83 S. Ct. 1011, that they might be said to be, in effect, identical. In each instance the operative effect of the Kansas Commission orders was and is to compel each of the appellants to increase its purchases of gas from the wells to it connected in the Kansas Hugoton Gas Field far beyond the amount of gas it requires therefrom to satisfy its interstate markets and in excess of its contractual obligations to producers whose wells are connected to its pipeline system in such field.[32] Such orders are so exces-

32. This Court considered this precise problem in *Northern Nat. Gas Co.* v. *State Corp. Com.*, *supra*. In such case the Federal Power Commission, as *amicus curiae*, filed with this Court a memorandum in which it asserted that the Kansas orders requiring Northern to take ratably in the Kansas Hugoton Field would require such company either to increase its takes from such field or incur contractual liability to one of its connected producers therein. The Federal Power Commission further asserted that

sive in the fixing of allowables to the wells in said field that great underages in production (allowables in excess of market demand) have accrued to the wells connected to the systems of each appellant; and as such underages have grown to such proportion to be in excess of six times the January well allowable of each of the wells to which such underages are attributed there have been substantial cancellations by said Kansas Commission of such underages. As of the hearing in September-October, 1959, before the Kansas Commission orders in October, 1959, and subsequent months were issued, cancellations of underages in excess of 24 billion cubic feet had occurred with respect to allowables granted to wells connected to Northern's system in said field.[33]

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if Northern were required to take from the Kansas Hugoton Gas Field gas which it did not want and for which it had no present market, it would then of necessity be required to reduce its takes in other fields and thereby incur contractual liability in those fields. (See *Northern Nat. Gas Co. v. State Corp. Com.*, *supra*, Separate Opinion by Mr. Justice Harlan, footnote 1.)

What appears to be a coincidental analogy of circumstances is, in fact, the same case all over again. Here, for these appellants to purchase gas from the Kansas Hugoton Gas Field in amounts co-equal to the excessive Kansas Commission allowables, would necessitate not only great expenditures to increase pipeline capacity, but would also result in these appellants being required to reduce their takes in other fields thereby incurring contractual liability to producers in those fields. On the other hand, failure on the part of appellants to purchase co-equally with the excessive Kansas Commission allowables results, and has resulted, in Kansas Commission cancellation of the right to produce, and thus of the right to purchase, extraordinary amounts of gas. Not only would such cancellations deny to the appellants rights to purchase gas dedicated by long-term contracts to their interstate markets, but it also would result in diversion of such reserves to the interstate markets of other "natural-gas company" purchasers in the field.

33. As shown in appellants' Motion for Rehearing to the Kansas Supreme Court—for the month of November, 1963, the

The end result of such Kansas Commission orders is to compel interstate pipe line gas purchasers such as Northern and Cities to so increase purchases of gas from the Kansas Hugoton Field as to require them to limit their purchases of gas from fields in other states, irrespective of the requirements of contracts which have been ap-

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Kansas Commission's gas proration Order and Report for the Kansas Hugoton Field showed that the total production from said field for the prior month (October) totalled 39,500,123,000 cubic feet; that at the end of such October the wells in the field were carrying a total underage (allowable in excess of market demand) on the uncorrected Kansas Commission schedules in the amount of 240,052,251,000 cubic feet; that in addition thereto approximately 80,000,000,000 cubic feet of underages, according to the uncorrected Commission schedule, had been cancelled, the major portion of which was attributable to wells connected to Northern's system.

As a result of a public hearing by the Kansas Commission in December, 1963, it entered its Order No. 44-3-21 in its Docket C-164, on December 26, 1963, in the matter of establishing rules and regulations relating to the production, sale and conservation of natural gas in the Kansas Hugoton Gas Field reading:

> "It is therefore, by the Commission ordered: That for the twelve months period beginning January 1, 1964, no accumulation of underproduction to wells in the Hugoton Gas Field shall be cancelled; further, that all amounts of underage cancelled to said wells on or before January 1, 1964, should be available for reinstatement on verified application therefor showing the wells are capable of producing the amounts of gas to be reinstated, and that the purchaser will take such amounts of gas; provided however, *that any amounts of gas so reinstated must be run within the twelve months period after said reinstatement appears on the monthly proration order and report for the field.*
>
> "The Commission retains jurisdiction of the subject matter and the parties for the purpose of entering such further order or orders as from time to time it may deem proper." (Emphasis supplied).

At such hearing the Commission staff through its witness sponsored and secured the admission into evidence of Exhibit 6 reflecting by purchasers the volumes of underage cancelled in the Kansas Hugoton Gas Field from May, 1956, through October, 1963; copy thereof is attached hereto as Appendix "R". This exhibit reflects that as of November 1, 1963, the Commission's uncorrected schedules showed there had been cancelled approxi-

proved for service by the Federal Power Commission, or if such an interstate pipe line purchaser fails or is unable to do so, then another interstate pipe line purchaser which desires to purchase more gas from said Kansas Hugoton Field than its portion of the reserves therein to the total market in such field justifies, is permitted to purchase excessive volumes of gas from such field and thereby acquire, without compensation to the owner thereof, substantial gas reserves dedicated to it and its markets, based on which such owner's substantial investments have been made for the transportation thereof to its markets authorized by certificates issued by the Federal Power Commission in reliance upon such reserves. If this is accomplished it will have the effect of diverting Northern's and Cities' gas reserves to other underconnected pipe line companies' consumers. If that occurs it may be the cause of litigation

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mately 80,000,000,000 cubic feet of underages in allowables to wells in the Kansas Hugoton Gas Field, of which 71,205,834,000 cubic feet of underages so cancelled were attributable to wells connected to Northern's system and 5,621,780,000 cubic feet of underages so cancelled were attributed to wells connected to Cities' system. Northern's pipe line system annual maximum capacity available for purchase of gas in the Kansas Hugoton Gas Field, calculated at 90% load factor due to the necessary annual overall program, is 167,540,000,000 cubic feet. Before being permitted to purchase any reinstated cancelled underages in allowables assigned to wells connected to its system, Northern must purchase the current allowables assigned to such wells which during a typical year, 1963, totalled 133,232,139,000 cubic feet. Adding to such total the 71,205,834,000 cubic feet of underages shown cancelled on the Commission's uncorrected schedules attributed to such wells, assuming the whole thereof is reinstated, it will be observed that the total thereof will substantially exceed Northern's pipe line capacity, with the result that it would appear impossible for Northern to purchase during the succeeding year (as required by Kansas Commission orders) all of such underages in allowables so cancelled in event of their reinstatement. See *State Tax Commission* v. *Van Cott*, 306 U.S. 511, 515, 83 L.Ed. 950, 953, 59 S.Ct. 605.

of such consequence as to impede the exercise of and impair the rights granted under the gas purchase contract creating such dedicated reserves and increase the gas costs to interstate consumers.[34]

If the regulatory body in Kansas is determined to have the authority which it is attempting to exercise through its orders here complained of, then, of course, the regularly constituted administrative agencies of every other gas producing state would have the same right, and without any purpose relating to proration or conservation of gas production could compel the interstate gas purchasing companies to follow a fixed plan of depletion in the gas fields from which they purchase gas, or suffer the loss of their dedicated gas reserves, which—as here—would be diverted to other markets of underconnected gas pipe line purchasers. The whole comprehensive scheme of federal regulation as contemplated by Congress under the Natural Gas Act would become a shambles and fail. Accordingly, the resolution of the questions here involved is imperative. If the Federal Power Commission's jurisdiction to protect adequate service to ultimate consumers in the interstate markets of the respective gas pipe line companies is to be preserved, then these Kansas Commission orders must fall.

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34. During the week of November 4, 1963, just two days after the Kansas Court handed down its opinions and judgments herein appealed, numerous landowners' lawsuits were commenced in the District Court of Stevens County, Kansas, against one of the producers whose wells are connected to Northern's system. Such actions were for damages for alleged breach of such producer lessee's implied covenant to market gas from particular wells from which it produces gas in the Kansas Hugoton Gas Field. Such damages were alleged to be measured by the so-called wellhead value of the landowners' (royalty owners) interest in the fictitious Kansas Commission underages which had been under said Kansas Commission orders cancelled for the reason that there was in fact no market to absorb the fictitious allowables granted to such wells.

THE KANSAS COMMISSION ORDERS CONSTITUTE A FRONTAL ATTACK ON THE FEDERAL POWER COMMISSION'S EXCLUSIVE JURISDICTION OVER THE REGULATION OF THE SALE AND TRANSPORTATION OF NATURAL GAS IN INTERSTATE COMMERCE

The Kansas Court in its opinions and judgments sustaining the validity of such Kansas Commission's orders has overlooked and completely disregarded the plain provisions of the Natural Gas Act and subsisting regulations of the Federal Power Commission thereunder, as well as the recent controlling decisions of the Supreme Court of the United States construing and applying such Act to substantially the same uncontrovertable circumstances appearing in the record before this Court in these cases.

In *Gomillion* v. *Lightfoot*, (1960) 364 U.S. 339, 347, 5 L. Ed. 2d 110, 117, 81 S. Ct. 125, this Court lays down the correct rule applicable here:

> "When a State exercises power wholly within the domain of state interest, it is insulated from federal judicial review. *But such insulation is not carried over when state power is used as an instrument for circumventing a federally protected right.* This principle has had many applications. *It has long been recognized in cases which have prohibited a State from exploiting a power acknowledged to be absolute in an isolated context to justify the imposition of an 'unconstitutional condition.'*" (Emphasis supplied).

The latest expression by this Court of the same rule is in *Sears, Roebuck & Co.* v. *Stiffel Co.*, (1964) ..... U.S. ....., 84 S. Ct. ....., 11 L. Ed. 2d 661, where (omitting cases) this Court says:

"These laws, like other laws of the United States enacted pursuant to constitutional authority, are the supreme law of the land. When state law touches upon the area of these federal statutes, it is 'familiar doctrine' that the federal policy 'may not be set at naught, or its benefits denied' by the state law. This is true, of course, even if the state law is enacted in the exercise of otherwise undoubted state power." (l.c. 665 of L. Ed. 2d).

* * *

"Just as a State cannot encroach upon the federal patent laws directly, it cannot, under some other law, such as that forbidding unfair competition, give protection of a kind that clashes with the objectives of the federal patent laws." (l.c. 667 of L. Ed. 2d).

15 U.S.C. 717 (a) specifically declares, among other things:

"* * * that the business of transporting and selling natural gas for ultimate distribution to the public is affected with a public interest, and that *Federal regulation* in matters relating to the transportation of natural gas and the sale thereof in interstate . . . commerce is necessary in the public interest." (Emphasis supplied).

Section (b) of the same Act provides:

"The provisions of this chapter shall apply to the *transportation* of natural gas in interstate commerce, to the *sale* in interstate commerce of natural gas for resale for ultimate or public consumption for domestic, commercial, industrial, or any other use, and to *natural-gas companies* engaged in *such transportation or sale*, but shall not apply to any othe transportation or sale of natural gas or to the local distribution of natural gas or to the facilities used for such distribution or to the production or gathering of natural gas." (Emphasis supplied)

There is here presented a portion of the unlawful scheme, one segment of which was before this Court in *Northern Nat. Gas Co.* v. *State Corp. Com.*, (February, 1963) 372 U.S. 84, 9 L. Ed. 2d 601, 83 S. Ct. 646, reh. den. 372 U.S. 960, 10 L. Ed. 2d 14, 83 S. Ct. 1011. There were there involved orders of the Kansas Commission based upon the same Kansas gas conservation statute, the same Basic Proration Order for the Kansas Hugoton Field, the same Natural Gas Act, and the same unlawful objective of the Kansas Commission. The State Commission here is presenting the same contention it presented there. While the orders there considered were orders specifically directed to and against the purchaser of natural gas in interstate commerce for resale, the operative effect of orders here at issue achieves the same result, and thereby consummates the same unlawful objective of the Kansas Commission there nullified by this Court.

In the *Northern Nat.* case, *supra,* in speaking of the Natural Gas Act and construing its provisions this Court said (omitting cases cited):

> "The Congress enacted a comprehensive scheme of federal *regulation* of all wholesales of natural gas in interstate commerce, whether by a pipeline company or not and whether occurring before, during, or after transmission by an interstate pipeline company'.
>
> "The federal regulatory scheme leaves no room either for *direct* state regulation of the prices of interstate wholesales of natural gas or *for state regulations which would indirectly achieve the same result. These state orders necessarily deal with matters, which directly affect the ability of the Federal Power Commission to regulate comprehensively and effectively the transportation and sale of natural gas, and to achieve the uniformity of regulation which was an objective of the Natural Gas Act. They therefore invalidly in-*

vade the federal agency's exclusive domain." (Emphasis supplied) (l.c. 607 of 9 L. Ed. 2d).

"It may be true, as the State Commission urges, that accommodation on the part of the Federal Power Commission could avoid direct collision—but this argument misses the point. *Not the federal but the state regulation must be subordinated, when Congress has so plainly occupied the regulatory field.* We have already said that the question to be asked under this statute is 'whether state authority can practicably regulate a given area and, if we *find* that it cannot, *then we are impelled to decide that federal authority governs*'." (Emphasis supplied) (l.c. 608 of 9 L. Ed. 2d).

"Appellee's principal contention, sustained by the Kansas Supreme Court, is that ratable taking is essential for the conservation of natural gas, and that conservation is traditionally a function of state power. There is no doubt that the States do possess power to allocate and conserve scarce natural resources upon and beneath their lands. We have recognized such power with particular respect to natural gas. *But the problem of this case is not as to the existence or even the scope of a State's power to conserve its natural resources; the problem is only whether the Constitution sanctions the particular means chosen by Kansas to exercise the conceded power if those means threaten effectuation of the federal regulatory scheme.*" (Emphasis supplied) (l.c. 608, 609 of 9 L. Ed. 2d)

When this Court speaks of *regulation* and *regulatory authority* of the Federal Power Commission, it does not mean that such regulation is restricted merely to prices or rates. See *Atlantic Ref. Co.* v. *Pub. Serv. Com. of New York*, 360 U.S. 378, 3 L. Ed. 2d 1312, 1320, 79 S. Ct. 1246. In Federal Power Commission opinion No. 410, *Panhandle Eastern Pipe Line Company*, Docket No. CP 63-159, issued

November 12, 1963, ... FPC Reports ....., in footnote 4 at page 4 of the manuscript opinion, the Federal Power Commission had this to say:

> "In the usual case 'public convenience and necessity' embrace the conventional elements of gas supply, financing, facilities, markets, economic feasibility, and rates, although in a certificate proceeding we need not determine the 'just and reasonable' rate for the service. The particular facts of a case may justify considering other elements. Judgment is reached on weighing all relevant considerations for and against the authorization; as the Supreme Court has said, 'the term "public convenience and necessity" connotes a flexible balancing process, in the course of which all the factors are weighed prior to final determination.' And to be sure the standards of the statute and Commission policy are met, we may attach to a certificate such reasonable conditions as the public convenience and necessity require."

Long ago in *Dayton-Goose Creek R. Co.* v. *United States*, 263 U.S. 456, 478, 68 L. Ed. 388, 398, 44 S. Ct. 169, this Court defined and clarified the meaning of the word "regulate" as it pertained to commerce by saying:

> "It was insisted in the two cases referred to, and it is insisted here, that the power to regulate interstate commerce is limited to the fixing of reasonable rates and the prevention of those which are discriminatory, and that, when these objects are attained, *the power of regulation is exhausted*. This is too narrow a view of the Commerce Clause. *To regulate in the sense intended is to foster, protect, and control the commerce with appropriate regard to the welfare of those who are immediately concerned, as well as the public at large, and to promote its growth and insure its safety.*" (Citing many cases) (Emphasis supplied)

As recently as 1963 this Court cited with approval in the *Northern Nat.* case, *supra*, the rule of the *Dayton-*

Goose Creek case, *supra*, which applies an all-encompassing effect to the word "regulate" in speaking of the power of Congress over interstate commerce. In *North American Co. v. Securities & Exch. Com.*, 327 U.S. 686, 704, 705, 90 L. Ed. 945, 958, 66 S. Ct. 784, this Court stated (omitting cases):

> "For nearly one hundred and twenty-five years, this Court has recognized that the power of Congress over interstate commerce is '*the power to regulate; that is, to prescribe the rule by which commerce is to be governed. This power, like all others vested in Congress, is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations, other than are prescribed in the constitution.*' Gibbons v. Ogden, supra (9 Wheat. (US) 196, 6 L. Ed. 70)."
>
> * * *
>
> "This broad commerce clause does not operate so as to render the nation powerless to defend itself against economic forces that Congress decrees inimical or destructive of the national economy. Rather it is an affirmative power commensurate with the national needs. *It is unrestricted by contrary state laws or private contracts.* And in using this great power, Congress is not bound by technical legal conceptions. Commerce itself is an intensely practical matter. (Citing cases) *To deal with it effectively, Congress must be able to act in terms of economic and financial realities. The Commerce clause gives it authority so to act.*
>
> "*We need not attempt here to draw the outer limits of this plenary power. It is sufficient to reiterate the well-settled principle that Congress may impose relevant conditions and requirements on those who use the channels of interstate commerce in order that those channels will not become the means of promoting or spreading evil, whether of a physical, moral or economic nature.*" (Citing cases) (Emphasis supplied)

To paraphrase the language of *Dayton-Goose Creek, supra*, and apply it here it may be said:

> To regulate a sale and transportation of natural gas in interstate commerce for resale in the sense intended by the Natural Gas Act is to foster, protect, and control the sale and transportation of such natural gas in all its aspects, including natural gas companies engaged in such transportation and sale; otherwise, not only the interests of those immediately concerned, but the ultimate public consumer as well, which the Natural Gas Act was designed to protect, will not be so protected and the safety and growth of interstate commerce in natural gas insured.

It is perfectly clear that Congress has already occupied the areas sought by these Kansas Commission orders to be regulated. Such occupation is an exclusive one.

If Kansas has the jurisdictional right to compel interstate pipe line companies to purchase and transport a greater volume of gas from Kansas than their markets for gas therein, then every other gas producing state can do likewise. If this is permitted, the intent of Congress to "create a comprehensive and effective regulatory scheme" in enacting the Natural Gas Act (*Panhandle E. Pipe Line Co. v. Public Serv. Com.*, 332 U.S. 507, 520, 92 L. Ed. 128, 68 S. Ct. 190) becomes a myth instead of a reality. Compare *West v. Kansas Natural Gas Co.*, 221 U.S. 229, 55 L. Ed. 716, 31 S. Ct. 564; *Pennsylvania v. West Virginia*, 262 U.S. 553, 67 L. Ed. 1117, 43 S. Ct. 658, 32 A.L.R. 300; *Michigan-Wisconsin P. L. Co. v. Calvert*, 347 U.S. 157, 170, 98 L. Ed. 583, 593-594, 74 S. Ct. 396; *Polar Ice Cream & C. Co. v. Andrews*, ... U.S. ....., 11 L. Ed. 2d 389, 84 S. Ct. 378, 385-386. It is immediately clear that interstate gas operations and the consuming public would suffer consequences (the extent and degree of which presently may not be

foreseeable), half free from state restraint and half slave thereto, with the designated federal regulatory agency, the Federal Power Commission, helpless to perform its jurisdictional function.

It is submitted that the orderly administration of the Natural Gas Act requires that this Court take jurisdiction in these appeals and strike down this latest attempt by the State of Kansas to interfere with and transgress upon the jurisdiction of the Federal Power Commission in the transportation and sale of gas in interstate commerce for resale.

Respectfully submitted,

CONRAD C. MOUNT
CHARLES V. WHEELER
*GEORGE E. PEABODY
P.O. Box 1995
Oklahoma City, Oklahoma

*MARK H. ADAMS
MARK H. ADAMS, II
503 Colorado Derby Building
Wichita, Kansas

Attorneys for Appellant, Cities Service Gas Company

F. VINSON ROACH
JACK C. OSBORNE
*PATRICK J. MCCARTHY
2223 Dodge Street
Omaha, Nebraska

*MARK H. ADAMS
MARK H. ADAMS, II
JOE ROLSTON
503 Colorado Derby Building
Wichita, Kansas

Attorneys for Appellant, Northern Natural Gas Company

*Attorneys upon whom service should be made.

APPENDIX "A"

SUPREME COURT STATE OF KANSAS

JULY TERM, 1963

No. 41,515

COLORADO INTERSTATE GAS COMPANY, *Appellee*, v. THE STATE CORPORATION COMMISSION OF THE STATE OF KANSAS, SOUTHWEST KANSAS ROYALTY OWNERS ASSOCIATION, and PANHANDLE EASTERN PIPE LINE COMPANY, *Appellants*, *Cross-Appellants*, and *Cross-Appellees*.

No. 41,516

NORTHERN NATURAL GAS COMPANY, a corporation, *Appellee*, v. THE STATE CORPORATION COMMISSION OF THE STATE OF KANSAS, SOUTHWEST KANSAS ROYALTY OWNERS ASSOCIATION, and PANHANDLE EASTERN PIPE LINE COMPANY, *Appellants*, *Cross-Appellants*, and *Cross-Appellees*.

No. 41,555

COLORADO INTERSTATE GAS COMPANY, *Appellee*, v. THE STATE CORPORATION COMMISSION OF THE STATE OF KANSAS, SOUTHWEST KANSAS ROYALTY OWNERS ASSOCIATION, and PANHANDLE EASTERN PIPE LINE COMPANY, *Appellants*, *Cross-Appellants*, and *Cross-Appellees*.

No. 41,556

NORTHERN NATURAL GAS COMPANY, a corporation, *Appellee*, v. THE STATE CORPORATION COMMISSION OF THE STATE OF KANSAS, SOUTHWEST KANSAS ROYALTY OWNERS ASSOCIATION, and PANHANDLE EASTERN PIPE LINE COMPANY, *Appellants*, *Cross-Appellants*, and *Cross-Appellees*.

SYLLABUS BY THE COURT

1. GAS—*Review of Commission's Order—Petition for Rehearing*. A district court has no jurisdiction to review

an order of the State Corporation Commission issued under the provisions of the Gas Conservation Statute, G.S. 1949, 55-701 *et seq.*, in the absence of a timely petition for rehearing as required by G.S. 1949, 55-606.

2. SAME—*Extent of Court's Authority to Set Aside Commission's Order.* A district court is given authority to set aside an unlawful order of the Commission issued under the Gas Conservation Statute, but it cannot direct the Commission to follow any particular formula in correcting its order.

3. SAME—*Commission's Order Stating Formulae Factors —When Not Reviewable.* Where an order of the Commission states only formulae, factors, and policy to be followed in the future and further action is necessary before it can have any effect, it is not subject to judicial review.

4. SAME—*Setting Aside Commission's Order—Court Required to Make Findings and Conclusions.* Where a district court sets aside an order of the Commission, it is required to make findings of fact and conclusions of law which disclose the reason for its judgment.

5. SAME—*Determining Validity of Commission's Orders—What Court May Consider.* In determining the validity of the Commission's orders regulating the production of natural gas, the courts can consider only the statutes granting the Commission's authority and the Commission's basic orders with such amendments as are properly made thereto.

6. GAS—*Facts Matter of Commission's Discretion—Courts Cannot Substitute Their Judgment.* The facts that are to be considered and the relative weight to be given them in making a determination are matters left to the Commission's discretion. The courts cannot substitute their judgment for that of the Commission.

7. SAME—*Orders of Commission Fixing Production Allowables—Validity.* The record, covering numerous ap-

peals from judgments of the district court setting aside orders of the Commission fixing production allowables for the Kansas Hugoton Gas Field, is examined and it is held: (1) the orders were supported by substantial competent evidence; (2) the orders did not violate the provision of G.S. 1949 55-703, or the Commission's basic order; (3) the orders did not constitute an interference with interstate commerce or invade the province of the Federal Power Commission under the Natural Gas Act; (4) the orders did not violate the due process clause of the Constitution of the United States or impair the obligation of contracts.

Appeals from Finney district court, ROLAND H. TATE, judge. Opinion filed November 2, 1963. Reversed with directions.

Robert C. Londerholm, of Topeka, argued the cause, and *J. Robert Wilson*, *John D. Townsend*, *Charles C. McCarter*, *J. B. Grant*, and *Charles R. Escola*, all of Topeka, and *Richard C. Byra*, of Ottawa, were with him on the briefs for the appellant, The State Corporation Commission of the State of Kansas.

Dale M. Stucky, of Wichita, argued the cause, and *A. E. Kramer* and *Bernard Nordling*, both of Hugoton, *Wayne E. Coulson*, *Paul R. Kitch*, *Donald R. Newkirk*, *Robert J. Hill*, *Gerrit H. Wormhoudt*, *Philip Kassebaum*, *John E. Rees*, *Robert T. Cornwell*, *Willard B. Thompson*, *David W. Buxton*, *Homer V. Gooing*, and *Hugo T. Wedell*, all of Wichita, were with him on the briefs for the appellant, Southwest Kansas Royalty Owners Association.

Jeff A. Robertson, of Topeka, argued the cause, and *Wendell J. Doggett* and *C. A. Conoley*, both of Kansas City, Missouri, and *Chas. Vance* and *C. C. Linley*, both of Liberal, were with him on the briefs for the appellant, Panhandle Eastern Pipe Line Company.

Malcolm Miller, of Wichita, argued the cause, and *L. M. Poe*, Colorado Springs, Colorado, *Ray H. Calihan* and *Daniel R. Hopkins*, both of Garden City, and *Carl T. Smith*, *Stuart R. Carter*, and *Gerald Sawatzky*, all of Wichita, were with him on the briefs for the appellee, Colorado Interstate Gas Company.

Mark H. Adams, II, of Wichita, argued the cause and *Lawrence I. Shaw*, *F. Vinson Roach*, and *Patrick J. McCarthy*, all of Omaha, Nebraska, *Ray H. Calihan*, *Logan N. Green*, *Daniel R. Hopkins*, and *Ray H. Calihan, Jr.*, all of Garden City, *Mark H. Adams*, *Charles E. Jones*, *William I. Robinson*, *J. Ashford Manka*, *Clifford L. Malone*, *John S. Seeber*, *Floyd E. Jensen*, and *Joe Rolston*, all of Wichita, were with him on the briefs for the appellee, Northern Natural Gas Company, a corporation.

The opinion of the court was delivered by

HATCHER, C.: These appeals are from judgments of the district court on the review of numerous orders of the State Corporation Commission establishing allowables for the Kansas-Hugoton Natural Gas Field. The review proceedings challenged the validity of monthly allowable orders and related orders pertaining to the gas field. The many appeals filed (thirty-nine) as Cases 41,515 and 41,516 are from identical judgments rendered in separate actions which were tried together on a single record and involve the orders from May, 1956, through September, 1958. Cases 41,555 and 41,556 are appeals (thirty) from similar judgments involving the Commission's six-months allowable order for the period from October, 1958, through March, 1959, and the monthly allowable order for October, 1958, through January, 1959.

The lower court "reversed and set aside" all of the orders in part. Appeals were then taken to this court.

Before the above mentioned cases reached this court for determination, additional appeals had been filed challenging judgments of district courts in two separate forums which had reviewed the same orders of the Commission fixing the six-months allowables for the period covering October 1, 1959, through March 31, 1960, and also the monthly allowable orders covering each month for the same period. Although these appeals will be disposed of in a separate opinion, they are mentioned here because the general facts are applicable to all.

It will be noted that the various parties filed separate appeals, separate abstracts, and separate briefs. Fifty-two separate printed documents consisting of abstracts and briefs have been presented to this court, all covering substantially the same facts and questions of law.

The district court, which disapproved the orders of the Commission, refused to make findings of fact and conclusions of law. In an attempt to have the issues pinpointed, and to develop some semblance of order from the voluminous and chaotic record, this court appointed Mr. Harry Colmery, a member of the Bar of this state, to make findings of fact and conclusions of law on what he thought to be the issues involved in the numerous appeals and report thereon. The Commissioner has done so in a most efficient and commendable manner. Although the Commissioner's findings and conclusions can be advisory only, they have served the very useful purpose of forcing the parties to limit their controversy to clear-cut issues. The findings and conclusions of the Commissioner are challenged in some respects. Some errors occurred because of ambiguities and confusion in the record. The report of the Commissioner has resulted in clarification of such matters through supplemental briefs.

The Hugoton Gas Field was discovered near Hugoton, Kansas, in 1922, but it was not until about 1929 that its possibilities for domestic and industrial purposes had been fully realized. It is said to be the largest known reservoir of natural gas in the world, the gas being found at a depth of about 2,600 to 2,900 feet in porous limestone and dolomite formations about 50 feet thick. The thickness of the gas producing horizons varies considerably. Such horizons are not uniform as to their porosity or permeability. The field, as presently developed, is approximately 160 miles long and varies from 40 to 72 miles in width. It covers portions of the nine counties in the southwest corner of Kansas, extends across the entire width of the Oklahoma Panhandle, and into portions of several counties of northern Texas. The largest portion, about two-thirds, of the field is located in Kansas. This portion is commonly known as "Kansas-Hugoton." The portion in Oklahoma is called "Guymon-Hugoton" and that part in Texas "Texas-Hugoton."

The sole purchasers of gas produced in the Kansas Hugoton Field, as stated by the Commission, are Cities Service Gas Company, Colorado Interstate Gas Company, Hugoton Production Company, Kansas-Colorado Utilities, Inc., Kansas-Nebraska Natural Gas Company, Inc., Northern Natural Gas Company, Panhandle Eastern Pipeline Company, Quincue Oil and Gas Producing Company, United Carbon Company, and Shallow Water Refining Company.

When the basic order for the field was promulgated in April, 1944, there were only 331 Kansas wells. When these proceedings were initiated in 1956 there were 3,555 Kansas wells producing from 2,262,748 acres. There are relatively few remaining undrilled locations.

Most of the gas from the Kansas-Hugoton Field is transported through large pipelines to points far removed from

Kansas. A small portion is consumed in the Wichita, Topeka, and Kansas City areas. The rest is transported and consumed in Michigan, Minnesota, Ohio, Illinois, Indiana, Missouri, Colorado, and Nebraska. With one or two exceptions the gas produced from the Oklahoma and Texas portions of the field is similarly transported through the same large pipeline systems for the same or similar uses.

The integrated pipeline systems which transport gas from the Kansas-Hugoton Field are also connected with other gas fields. Kansas gas is therein commingled with gas from various other fields, including the Guymon-Hugoton.

In 1956, five major pipelines, Cities Service Gas Company (Cities Service), Northern Natural Gas Company (Northern Natural), Panhandle Eastern Pipe Line Company (Panhandle), Kansas-Nebraska Natural Gas Company (Kansas-Nebraska), and Colorado Interstate Gas Company (Colorado Interstate), had acquired the exclusive right to purchase the gas produced from 90% of the Kansas-Hugoton wells. (These five pipeline companies, which are involved in this controversy, will hereinafter be identified as indicated in the parentheses.) Two companies, Cities Service and Northern Natural, controlled through purchase contracts approximately 56% of the field's deliverability.

Except for a very limited phase of Panhandle and Kansas-Nebraska's operations, these pipelines are not producers. They do not own the land, leases, or wells from which the gas is produced.

In 1935, the Kansas Legislature enacted a statute entitled "Production and Conservation of Natural Gas" (Laws of 1935, Ch. 213), which now appears, with some amendments, as G.S. 1949, 55-701, *et seq.*

G.S. 1949, 55-701, provides:

> "That the production of natural gas in the state of Kansas in such manner and under such conditions and for such purposes as to constitute waste, is hereby prohibited."

It will be noted that the first and main emphasis is placed on the prohibition against waste. The term waste is defined by G.S. 1949, 55-702.

G.S. 1949, 55-703, provides the conditions under which the Commission shall take jurisdiction over production in a gas field by the following language:

> "That whenever the available production of natural gas from any common source of supply is in excess of the market demands for such gas from such common source of supply, or whenever the market demands for natural gas from any common source of supply can be fulfilled only by the production of natural gas therefrom under conditions constituting waste as herein defined, or whenever the commission finds and determines that the orderly development of, and production of natural gas from, any common source of supply requires the exercise of its jurisdiction. . . ."

The section further provides for ratable taking

> ". . . The commission shall so regulate the taking of natural gas from any and all such common sources of supply within this state as to prevent the inequitable or unfair taking from such common source of supply by any person, firm or corporation and to prevent unreasonable discrimination in favor of or against any producer in any such common source of supply. . . ."

On the 21st day of March, 1944, the Commission promulgated what it designated "Basic Proration Order for the Hugoton Gas Field." In this order the Commission

first reviewed the history, development, and production in the field. It then stated that it was necessary for the Commission to take jurisdiction and to prescribe rules for the production of gas from the wells in the field and such other wells as may be later completed. The acreage for well spacing was fixed at 640. Pressure, open-flow, porosity, and thickness of pay, which determined deliverability against the pipeline pressure, was also to be taken into consideration in determining the wells' allowable. The order further provided:

> "At such time and place as the Commission shall fix, the Commission will, after notice, conduct a hearing to determine the market demand for natural gas from said field for the next six succeeding proration periods, or for such other period of time as the Commission shall prescribe, and at said hearing may determine any other questions which may properly and legally come before the Commission for consideration thereat, and a new schedule of production allowable for the wells in said field, based upon the determination made as a result of such hearing, shall be prepared and promulgated for the ensuing proration periods."

Paragraph p of the order provided in part:

> ". . . If, at the end of any proration period, there is an overage or underage in production for any well during such period, same shall be carried forward as a charge against or credit in favor of such well and subtracted from or added to, as the case may be, the allowable for such well for the next proration period. Any overage in production from any well during any proration period which is not equalized by ratable overages from all other wells in the field or which is not compensated for in the allowables fixed for other wells in the field for the next succeeding proration period or not otherwise made up within one year after

the proration period in which it occurred, shall constitute illegal overproduction from such well and such well shall be shut in until such overage is thereby fully made up. All wells with an overproduction of three times the amount of their current month's allowable shall be shut in by the operator or producer and not permitted to produce any gas until such overproduction has been fully absorbed by deductions from such overproduction made by current allowables. When any connected well has accumulated an underage in excess of three times its allowable for the current month, such excess shall thereupon be canceled and the amount so canceled shall be spread among all the wells of the field. Any underage so canceled shall not be considered in the determining of the future production of any such well, unless, upon notice and hearing, the Commission shall otherwise determine: *Provided, however,* That in no event shall any underproduction of an unconnected well be canceled."

The order further provided:

"That this order should constitute the Basic Order for the proration of production in said field on or after March 31, 1944, and until amended, changed, or modified by further order of the Commission.

. . . . . .

"It Is Further Ordered That the Commission hereby retains continuing jurisdiction of the subject matter hereof and of the parties hereto for the purpose of issuing from time to time such further order, amendments, additional orders, rules and regulations as may be necessary and proper in the premises."

Under the basic order each well was allowed to produce a certain quantity of natural gas per month. This was called the well's "allowable." From the beginning of proration in the Kansas-Hugoton Field until May, 1956, the allowables were set twice a year (March and September).

The Commission held market demand hearings where the pipelines presented their estimated takes (nominations) for the following six-month period. Each month the total nominations were taken to be the market demand for the field for that month. The market demand figure was adjusted by subtracting the field underage (allowables in excess of runs) for the prior month or by adding the field overage (runs in excess of allowables) for the prior month, whichever had happened. This adjusted figure (called current allowable) was spread ratably to the wells in the field.

The "net allowable" is not the figure that is spread to the wells. Only the current allowable is spread ratably among the wells in the field. Net allowable reflects the cumulative status of a well or wells. Some wells would be in an overproduced status and some would be in an underproduced status at the end of the prior month's runs. If a well were 500 MCF underproduced and its share of the field current allowable was 500 MCF, then its "net allowable" at the beginning of the month would be 1,000 MCF. The field net allowable reflected the cumulative status of the field at the beginning of the period for which the allowables were determined.

This method of calculating the allowables not only tended to hold the allowables to the requirements of the pipeline companies taking the least amount o gas from the field in proportion to which its connected reserves bore to the field as a whole, but prevented increased takes of gas by one company when it acquired new consumer markets unless the other pipelines also wanted to take more gas. If one pipeline company nominated to receive more gas, the extra allowable would be spread among all the wells in the field. If the other pipeline companies continued taking at the old rate, an under ge would be

created. The following month this underage would be deducted from the market demand to find the current allowable so they would be back where they started. Obviously one pipeline company could not effect any material change in the allowables unless the other pipeline companies went along with it. The pipeline companies did not expand at the same time, when one wanted more gas, the rest could exercise veto power.

It finally became apparent to the Commission that its method of fixing allowables was preventing the individual pipeline companies from obtaining their market demands, that the allowables which it was fixing had no relation to the actual market demand in the field, and that the field was being detrimentally affected by the allowables.

When the Commission issued its order for the regular market demand hearing on March 30, 1956, to determine the allowables for the period April 1, 1956, through September 30, 1956, it also issued an order to show cause, directed to the pipeline companies, for the purpose of obtaining information with which to solve the problem which its method of fixing allowables had created.

Under such order the various purchasers to whom it was directed were required to produce certain information set forth therein not less than five days prior to March 30, 1956. On March 30, 1956, the show cause docket was consolidated with the market demand hearing for the six months' period from April 1, 1956, to September 30, 1956. Thereafter such matters were heard on a common record, although various docket numbers were assigned to such hearings for the separate six months' market demand hearings.

The April, 1956, monthly allowable order used the "old method" but was entitled "Interim Order" as were

the monthly orders to and including November, 1957. After April, 1956, the Commission started experimenting with its method of determining allowables. It merely increased the market demand figure for three months (May, June, and July, 1956). A questionable procedure as it was without factual support. Next the Commission returned to the "old method" of letting nominations control the market demand figure, but stopped adjusting the market demand figure, in arriving at the allowable, by deducting underages or adding overages for the prior month. The current allowable was the nomination plus any canceled underage, for the preceding month, to be respread to the field pursuant to the basic order. This current allowable was spread to all wells in the field. This procedure was followed from August, 1956, through February, 1958, with the exception that in February and March, 1957, the Commission disregarded a zero nomination filed by Colorado Interstate and used instead its runs for a prior comparable period.

After its Report and Order, effective February 1, 1958, closing the show-cause docket, the Commission started determining the market demand by considering nominations, the rate of increase in total consumer markets of the pipeline companies compared to the rate of increase in their takes from the Kansas-Hugoton, the takes from other sources of supply, and other factors. The Commission continued the practice of not adjusting the market demand figure in arriving at the allowable by deducting the underages or adding the averages for the prior month. This procedure was followed from March, 1958, through January, 1959, and has continued.

Colorado Interstate and Northern Natural filed separate petitions for review of the orders under consideration in the district court of Finney County. Panhandle

and the Southwestern Kansas Royalty Owners Association (hereinafter referred to as Royalty Owners) intervened.

The cases were not consolidated but were tried on a common record. The lower court "reversed and set aside" all of the orders and further directed, as to the monthly allowable orders, that:

> ". . . the allowables set forth therein are void insofar as they are in excess of the allowables which would have been established under the method of calculating allowables used by the State Corporation Commission prior to May of 1956."

Following the overruling of motions for new trials, the Commission; Panhandle, and the Royalty Owners, appellants, filed separate appeals, abstracts, and briefs. Northern Natural and Colorado Interstate, appellees, filed separate counter-abstracts and briefs. The contentions of each of the three appellants are similar in nature and will not be separately considered. The same is true of the contention of the appellees.

Certain procedural questions have been raised which will first be given attention. Although the decision on the merits may render their determinations unnecessary, it is advisable that the proper procedure be outlined in order that the courts shall not again be faced with the chaotic situation that exists here.

The appellants contend that the allowable orders issued prior to November, 1957, are not subject to judicial review because no timely application for rehearing was filed with the Commission. We agree with appellants' contention.

Proceedings for judicial review of orders of the Commission are authorized by G.S. 1949, 55-707. It provides

that such actions ". . . may be brought and proceedings respecting same shall be governed by, and appeals may be taken as provided in section 55-606 of the General Statutes of Kansas of 1935, as amended [now G.S. 1949, 55-606], and that each and all of the provisions of said section, as so amended, shall apply to and govern such actions arising under this act."

With respect to actions for judicial review of the orders of the Commission, G.S. 1949, 55-606, provides:

> ". . . Before any such action may be brought by a person who was a party to the proceeding resulting in the making of a . . . order . . . of the commission, *a petition for rehearing shall first be filed with the commission within ten days from the date of the making of the . . . order . . . in question.* A rehearing shall be granted or denied by the commission within ten days from the date said petition is filed and if rehearing be not granted within ten days it shall be taken as denied. If rehearing be granted the matter shall be set for hearing as promptly as shall be convenient, and shall be determined by the commission within thirty days after the same shall be submitted. Such action may be brought by any person aggrieved, whether or not such person was the applicant for rehearing, within thirty days after the denial of the petition for rehearing, or, if rehearing is granted, then within thirty days after the final decision by the commission. . . ." (Emphasis ours.)

No petition for rehearing of any of the orders entered prior to November, 1957, were filed within the time prescribed by G.S. 1949, 55-606. The statute makes the filing of a timely petition for rehearing a prerequisite to the filing of a petition for judicial review.

The court had no authority to review the orders of the Commission except in the manner and to the extent

the statute gave it such authority. (*City of McPherson* v. *State Corporation Commission*, 174 Kan. 407, 414, 257 P.2d 123.)

In *Continental Investment Corp.* v. *State Corporation Comm.*, 156 Kan. 858, 137 P.2d 166, it is stated:

> ". . . When a person has a grievance against an order or ruling of an official board, he must seek redress in conformity with the procedure prescribed by the pertinent statute. In this case, that procedure is laid down in G.S. 1941 Supp., 55-605, 55-606. . . ." (p. 868.)

In *United States* v. *Tucker Truck Lines*, 344 U.S. 33, 36, 37, 97 L. Ed. 54, 73 S. Ct. 67, the court stated the rule as follows:

> "We have recognized in more than a few decisions, and Congress has recognized in more than a few statutes, that orderly procedure and good administration require that objections to the proceedings of an administrative agency be made while it has opportunity for correction in order to raise issues reviewable by the courts. . . ." (See also *F.P.C.* v. *Colorado Interstate Gas Co.*, 348 U.S. 492, 99 L. Ed. 583, 75 S. Ct. 467.)

The appellees do not contend that they filed timely petitions for rehearing at the time the monthly allowable orders were issued. They contend that these orders were interim, and not appealable until finalized by the Commission's general order, effective February 1, 1958.

The orders were designated "Interim Orders." The district court ruled that this designation indicated that the orders were not final.

We are concerned with the nature, character, and effect of the order and not with its name. (*Hayward* v. *State Corporation Comm.*, 151 Kan. 1008, 1013, 101 P.2d

1041.) G.S. 1949, 55-606, does not require that an order must be a "final" in order to be subject to review. It authorizes the review of "any" order by any person aggrieved by such order. It is not concerned with appeals, or appealable orders, nor with the definition of a final order in appellate procedure, or the jurisdiction of the courts with respect to such under the Code of Civil Procedure.

Whether or not a particular determination made by an administrative body is an "order" subject to review is determined by the substance of what that agency purports to do, or has done by the order, and not by the label placed upon it. Under the review procedure, an order is reviewable which determines rights or obligations or fixes some legal relationship as a consummation of the administrative process. (*C. & S. Air Lines* v. *Waterman Corp.*, 333 U.S. 103, 92 L. Ed. 568, 577 (sic), 68 S. Ct. 431.)

The Supreme Court of the United States, in *Pennsylvania R. Co.* v. *United States*, 363 U.S. 202, 4 L. Ed. 2d 1165, 80 S. Ct. 1131, stated the applicable principle as follows:

> ". . . We decided some years ago that while a mere 'abstract declaration' on some issue by the Commission may not be judicially reviewable, an order that determines a 'right or obligation' so that 'legal consequences' will flow from it is reviewable. . . ." (p. 205.)

Each of the monthly allowable orders contained the following statement:

> "That an interim order should be entered herein determining a schedule of production allowable to wells in the Hugoton Gas Field for the month of [particular month specified] 1957, but determinative of no other issue in Docket 51,488-C (c-4916) now pending before the Commission."

It is quite definite that the Commission intended the monthly allowable order to be final but not to determine or close the investigation under the show-cause docket. As timely petitions for rehearing were not filed covering the monthly allowable orders for May, 1956, through October, 1957, the orders were not subject to judicial review.

The district court reviewed the report and order of the Commission effective February 1, 1958, in which the Commission closed the show-cause docket, found the order void, and adjudged that it be set aside. The appellants contend that the order was not a proper subject for judicial review because it did not affect the rights of the parties but merely outlined the prospective action of the Commission. Appellants' contention is correct. The report and order does not of itself adversely affect anyone. An adverse effect will follow only if some future action is taken by the Commission.

The report and order reviewed the proceedings which took place under the show-cause order issued March 16, 1956; stated the questions presented for determination; set out findings of fact and the evidence to support them; stated the market demand factors to be considered in the future; presented the method for calculation of allowables, and considered the balancing period for over and under production of wells.

Some additional action in the way of fixing definite allowables had to be taken before the order could have any actual effect. If the adverse effect will follow only if some future action is taken by the Commission, the order is not subject to judicial review. This issue was determined in *Hayward* v. *State Corporation Comm.*, 151 Kan. 1008, 101 P.2d 1041, where this court had under consideration the first basic order issued by the Commission

in connection with the Kansas Hugoton Gas Field. The court stated the Commission's contention as follows:

> "Appellant [Commission] contends the basis order was not self-executing, but was merely a standard formula or guide pursuant to which the schedule of well allowables was to be determined and thereafter promulgated; that the commission had not completed its work, in that it had not yet determined and hence had not issued its schedule of well allowables. . . ." (p. 1014.)

The court held that the duties of the Commission were prematurely and improvidently stayed, stating:

> ". . . The fundamental principle that courts have no right to interfere by injunction with administrative and legislative functions yet to be performed by the corporation commission, is well established. *State, ex rel.*, v. *Capital Gas & Elec. Co.*, 139 Kan. Pac. 22; *Kansas City* v. *Utilities Commission, supra; State, ex rel.*, v. *Capital Gas & Elec. Co.*, 139 Kan. 870, 888, 33 P.2d 731; *State Comm'n* v. *Wichita Gas Co.*, 290 U.S. 561, 78 L. Ed. 500, 504-505.) Cases involving completed administrative and legislative functions are not in point. . . ." (l.c. 1015.)

The decision appears to be in harmony with the decisions of the Supreme Court of the United States.

In *Rochester Tel. Corp.* v. *U. S.*, 307 U.S. 125, 83 L. Ed. 1147, 59 S. Ct. 754, the court said:

> ". . . the order sought to be reviewed does not of itself adversely affect complainant, but only affects his rights adversely on the contingency of future administrative action. In view of traditional conceptions of federal judicial power, resort to the courts on these situations is either premature or wholly beyond their province." (p. 130.) (See also, *C. & S. Air Lines* v. *Waterman Corp.*, 333 U.S. 103, 92 L. Ed. 568, 68 S. Ct. 431 and *United States* v. *Los Angeles R.R.*, 273 U.S. 299, 71 L. Ed. 651, 47 S. Ct. 413.)

In the appeals Nos. 41,515 and 41,516, the monthly allowable orders for the months beginning May, 1956, and extending through November, 1957, and in appeals Nos. 41,555 and 41,556, the monthly allowable orders for the months October, November, and December, 1958, and January, 1959, were found by the district court to be void, and reversed and set them aside, stating:

> ". . . that the allowables set forth therein are void insofar as they are in excess of the allowables which would have been established under the method of calculating allowables used by the Commission prior to May of 1956." (Although the wording is not exactly the same in all the judgments, the result is the same in each.)

The administration of the law with respect to the production and conservation of natural gas is classified in that recognized area of regulation which necessitates the authority to exercise a considerable degree of discretion. The legislature delegated that authority to the Commission and with great latitude for the exercise of discretion through the promulgation of rules, regulations, orders, and decisions. In recognition of that authority, in providing for judicial review of the Commission's actions, it specifically limited the authority of the reviewing court by providing that:

> ". . . The authority of the court shall be limited to a judgment, either affirming or setting aside in whole or in part the rule, regulation, order or decision of the commission. . . ." (G.S. 1949, 55-606.)

The record before us shows that prior to May, 1956, the Commission followed a pattern or formula in the setting of allowables and that after May, 1956, it adopted a different formula. The nature of the difference is not material at this point. It is sufficient to state, and it is

agreed, that a change was made and that it produced different results.

The appellants contend that the district court, by its order, reduced the allowables to a determinable figure, made its own determination of what the allowables should be, and determined what formula should be used. We are forced to agree.

G.S. 1949, 55-606, gives the reviewing court authority to set aside any unlawful or arbitrary or unreasonable order, in whole or in part. But it does not give the court authority to substitute its judgment for that of the Commission by directing the Commission to enter a certain type of an allowable order, or by prescribing the formula which it must follow. The court has the authority to set aside only a part of the order. If, in this case, the court had set aside the entire allowable but let the remainder of the order stand, it would have been well within its jurisdiction. When the court determined the amount of the allowable by setting aside, not a part of the order but a part of the allowable, it is a clear invasion of the administrative function. This court considered the question in *White Eagle Oil Co.* v. *State Corporation Comm.*, 168 Kan. 548, 214 P.2d 337, where the district court set aside the orders of the Commission for the reason they denied the assignment of an allowable to a well on the basis of 640 acres as attributable thereto. The court said:

> ". . . That portion of it [the order] which directed the commission after consideration to enter its order assigning to the gas well an allowable based on the attribution thereto of the north half of section ten and the south half of section 6 was incorrect. The order should have been simply that the action was remanded to the commission with directions that it further consider its order." (p. 557.)

In *City of McPherson* v. *State Corporation Commission*, 174 Kan. 407, 257 P.2d 123, in considering the authority of the reviewing court under a similar statute, this court said:

> ". . . Its function was to consider what the Commission had considered, not to inject its own views into what should have been considered by the Commission. The court had no authority under the statute to review the work of the Commission except in the manner and to the extent the statute gave it such authority. . . ." (p. 414.)

The power of a court to replace the Commission's orders with its own, with respect to the establishment of allowables, has been ruled on specifically by courts in other oil and gas producing states having proration. In *Marrs* v. *R. R. Commission*, 142 Tex. 293, 177 S.W.2d 941, the district court reversed the monthly allowable orders and also held that the Commission could not set the allowables below 35,000 barrels daily. The Texas Supreme Court agreed that the allowable orders should be reversed, but as to the lower court's attempt to prescribe the terms of the Commission's allowable orders, it said:

> ". . . A court has the right to review the action of the Railroad Commission, and to strike its orders down if they are illegal; but it has no authority to write a proration order for the Commission, nor to prescribe the terms of a subsequent order to be entered by the Commission. . . .
>
> "The responsibility rests with the Commission to devise some scheme of proration that will conserve the oil in the field in question, and at the same time will be fair and just and will not deprive petitioners of their property. There are many and varied methods that may be adopted by the Commission to accomplish this purpose. This necessarily involves the exercise of the discretion that has been committed by the Leg-

islature to the Commission, and it would amount to a usurpation of the Commission's power by the court, for the court to undertake to prescribe the terms of such an order." (pp. 306, 307.) (See also, *Brown et al. v. Humble Oil Co.*, 126 Tex. 296, 83 S.W.2d 935, and *Interstate Comm. Comm. v. Ill. Cent. R.R.*, 215 U.S. 452, 54 L. Ed. 280, 30 S. Ct. 155.)

In connection with numerous cases pending before the court for judicial review, the appellant, Panhandle, filed motions requesting the court to make findings of fact and conclusions of law. The district court overruled the motions and entered its judgments setting aside the orders of the Commission. Panhandle claims error.

G.S. 1949, 55-606, which is made applicable to the review of the Commission's orders regulating the production of gas by G.S. 1949, 55-707, makes no specific provision for findings of fact and conclusions of law by the reviewing court. The statute provides its own procedure for judicial review and the provisions of the Code of Civil Procedure are not applicable where the procedure is covered by the statute. However, the statute further provides, ". . . All actions brought under this section shall have precedence in any court and on motion shall be advanced over any civil case of different nature pending in such court, and *such action shall be tried and determined as other civil action*. . . ." (Emphasis ours.) The purpose of this provision appears to be clear. Such procedural matters as are not covered by the oil and gas review statute are to be governed by the Rules of Civil Procedure as "such actions shall be tried and determined as other civil actions." Any other interpretation placed upon the provision would leave it without any force or effect.

G.S. 1949, 60-2921, provides:

> "Upon the trial of questions of fact by the court, it shall not be necessary for the court to state its finding, except generally, for the plaintiff or defendant, unless one of the parties request it, in which case the court shall state, in writing, the conclusions of fact found, separately from the conclusions of law."

This court considered the review statute in *Wakefield v. State Corporation Comm.*, 151 Kan. 1003, 101 P.2d 880, and stated at page 1007:

> ". . . The twelfth sentence, in providing that the district court shall not be bound by any finding of fact made by the commission, clearly indicates it was intended the district court should review the record before the commission in order to make its own independent findings of fact. . . ."

It was the failure of the trial court to make findings of fact and conclusions of law that has resulted in the voluminous record now before us. The result of the failure is well stated in Panhandle's brief as follows:

> "The cross petition of Panhandle Eastern in the Finney County Court attacked the Commission's market demand determination and raised an issue of fact. We doubt very much if the court ever considered the evidence regarding market demand. As long as the trial court adhered to the view that the runs must control the allowables, any question about market demand would be academic and such review would serve no practical purpose. It is necessary, however, to preserve the issue because it is of paramount importance if the runs do not control. The attorneys for this appellant vainly endeavored to find out the basis of the decision. Because of this failure, it has been necessary to abstract in detail a most voluminous record together with all various orders, pleadings and other papers, most of which may prove to be imma-

terial, but which could not safely be omitted. This is exactly the situation the statute is intended to prevent. . . ."

We must conclude that if the reviewing court does not adopt the findings of fact and conclusions of law of the Commission, it must make its own findings of fact and conclusions of law upon the request of any interested party.

Other important procedural questions pertaining to piecemeal review by various parties in multiple actions in separate district courts have been raised. They have not been ignored. However, the factual issues by which they are raised are not without dispute. The same questions are raised in the appeals in similar cases which were filed later and in which the facts are not in dispute. The remaining procedural question will be discussed in the opinion disposing of the appeals in the later cases. (*Colorado Interstate Gas Co.* v. *State Corporation Comm.*, 192 Kan. ____, ____ P.2d ____.)

We may now proceed to discuss the basic issues presented.

Certain monthly allowable orders (November, 1957, through January, 1958) issued by the Commission before its report and order, effective February 1, 1958, was entered, were before the district court for review, and are before this court on appeal. However, as the Commission followed the same formula in determining these monthly allowables as it did in determining the monthly allowables after it entered its report and order, it would serve no useful purpose to extend further this lengthy opinion by a separate discussion of them. We will consider the market demand determinations and the allowables made for the months beginning March, 1958, and extending through January, 1959.

The Commission's method of determining market demand and establishing allowables for the Kansas-Hugoton Field present the basic issues.

It may be stated as a general proposition of law that the determination of market demand and establishing allowables is a responsibility which the legislature has lodged in the Commission. The courts are without jurisdiction to determine the method the Commission should use or the factors which it should consider. The courts may examine the methods used for the purpose of determining whether the Commission has acted within the power and authority delegated to it by the legislature.

In considering the validity of the Commission's determination, the courts can consider only the statutes granting the Commission's authority and the Commission's basic order with such amendments as are properly made thereto. The determination is a question of fact. What facts are to be considered and the relative weight to be accorded them are matters left to the Commission's discretion. Unless the determination is arbitrarily or capriciously made without supporting evidence, the courts cannot interfere and substitute their judgment for that of the Commission. The question for the reviewing court is the power of the Commission to make the order, not its wisdom, propriety or expediency in having made it. (*Interstate Comm. Comm. v. Ill. Cent. R.R.*, 215 U.S. 452, 54 L. Ed. 280, 30 S. Ct. 155.) In *City of McPherson* v. *State Corporation Commission*, 174 Kan. 407, 257 P.2d 123, in considering the authority of the reviewing court under a similar statute, this court said:

> ". . . Its function was to consider what the Commission had considered, not to inject its own views into what should have been considered by the Commission. The court had no authority under the stat-

ute to review the work of the Commission except in the manner and to the extent the statute gave it such authority. . . ." (p. 414.)

It will perhaps be less confusing if we first consider the Commission's authority, the manner in which it determined market demand, and the evidence which it considered.

It should be noted that G.S. 1949, 55-703, is the only section in the statute pertaining to production and conservation of gas which makes direct use of the phrase "market demand." The determination of market demand is not the end result sought by the statute. It is rather the determination of the conditions under which the Commission shall take jurisdiction of production in a gas field.

The Commission shall regulate the taking of natural gas, ". . . [1] whenever the available production of natural gas from any common source of supply is in excess of the market demands for such gas from such common source of supply, or [2] whenever the market demands for natural gas from any common source of supply can be fulfilled only by the production of natural gas therefrom under conditions constituting waste as herein defined, or [3] whenever the commission finds and determines that the orderly development of, and production of natural gas from, any common source of supply requires the exercise of its jurisdiction. . . ." (G.S. 1949, 55-703.)

The Commission's basic order made use of the phrase "market demand" only in the following particular:

". . . At such time and place as the Commission shall fix, the Commission will, after notice, conduct a hearing to determine the market demand for natural gas from said field for the next six succeeding prora-

tion periods, or for such other period of time as the Commission shall prescribe, . . ."

Neither the statute nor the basic order defined "market demand." The term has rather a common understood meaning. Market demand is that amount of a commodity which the consuming public is able and willing to buy.

The word "demand" as used in a commercial sense is defined by Webster's New Century Dictionary (Unabridged) Second Edition:

> ". . . in economics, (a) the desire for a commodity together with ability to pay for it; (b) the amount people are ready and able to buy at a certain price. Opposed to *supply*. . . ."

The price and the availability of gas in the Kansas-Hugoton Field is not a deterring market factor. However, the consuming public cannot buy unless the gas is transported from the field to the market. Therefore the market demand for gas in the Kansas-Hugoton Field must be that amount which the consuming public is able and willing to purchase, restricted to the amount which the pipeline companies in the field are able to transport to the market.

Neither the statute nor the basic order state the formula or factors which the Commission shall use in determining market demand, nor the evidence which shall be considered. These matters are left to the discretion of the Commission.

The factors which the Commission used in determining market demand, in addition to those used prior to 1956, will next be considered.

Following the issuance of the show-cause order in March of 1956, the Commission held extensive hearings

covering the situation in the Kansas-Hugoton Field in general and the market demand in particular. It issued its report and order covering the matter, effective February 1, 1958. The Commission, among other findings, found and concluded in connection with the determination of market demand:

> "A review of the Commission's past allowable orders and the evidence presented in these dockets discloses that heretofore the nominations by the purchasers from the Hugoton Field have been used and considered by the Commission as the market demand for the field. However, the evidence presented in these dockets discloses that in many instances the aforesaid nominations did not approximate the market demand. Therefore, the Commission finds that it is necessary, in determining the market demand for natural gas from the Hugoton Field, to consider, in addition to the nominations by the purchasers, the following factors:
>
> "(1) Takes from other sources of supply to which the purchasers are connected.
>
> "(2) The total markets for natural gas of all purchasers from the Kansas-Hugoton Field; the rate of increase therein compared to the rate of increase in the takes from the Kansas portion of the Hugoton Field.
>
> "(3) Takes from other sources of supply in Kansas.
>
> "(4) Any other factors, conditions and or circumstances that would aid the Commission in establishing the market demand."

There is ample evidence to support the Commission's conclusion that in many instances the nominations did not approximate the market demand in the field. We will not review the evidence here as it will be discussed

in considering allowables. The question presented at this point is whether the Commission erroneously considered the factors quoted above in addition to the nominations by the pipeline companies.

The appellees contend that the pipeline companies' nominations are the only evidence of market demand that should be considered. We do not agree. The Commission endeavors to determine market demand for six months in the future. It must of necessity give some consideration to the entire market demand, the capacity of the pipelines in the field, possible addition of new consumers, increase in consumer demand, prospective weather conditions, and all factors that may affect the consumer, if its determination is to have veracity.

The Commission gave consideration to the new factors mentioned in its report and order, "in addition to the nomination of the purchasers." The record does not disclose what weight the Commission gave the new factors. It is not necessary that the Commission state just what weight it gives each factor covered by the evidence. If the evidence is admissible, it is for the Commission to determine the weight it shall be given, not the courts.

It would appear that the Commission used the additional factors mentioned largely for the purpose of checking the accuracy of the nominations. We have checked the nominations against the Commission's finding of market demand for the first nine months of 1958, and find no startling difference. During the winter months, January, February, and March, while the demand was well in excess of 40,000,000 MCF, the nominations and the market demand found by the Commission were substantially the same. During the months of April through September, the monthly market demand found by the Commission exceeded the nominations by approximately 2,000,000 MCF.

Panhandle, one of the major pipeline companies in the field, contends that the market demand, as determined by the Commission, is unreasonably low and that it cannot take enough gas to meet the demand of its market.

We find nothing in the record to indicate that the Commission acted arbitrarily and capriciously in determining the market demand for the field.

Appellees contend that the Commission unlawfully changed its method of determining allowables.

The only change the Commission made in determining allowables was that it ceased adding over production from wells for the preceding month to the current allowables and ceased deducting under production of wells for the preceding month from the current allowables.

It is clear that the method which the Commission used in determining market demand and calculating allowables prior to 1956, did not permit the producers to supply the market demand for gas in the Kansas-Hugoton Field and drove the pipeline companies to other fields to obtain a sufficient supply for their customers. It is clearly established by the record that from time to time during the period of 1944 to 1956, every pipeline in the field at one time or another required additional substantial amounts of gas to supply their added markets but that the gas could not be obtained from the Kansas-Hugoton Field because of the Commission's method of determining market demand and calculating allowables and that they were therefore forced to go to other fields for their supply. Counsel for Northern Natural stated in oral argument before this court that the company had at times taken on additional territory requiring a substantial amount of additional gas but that because the market could not be supplied from the Kansas-Hugoton Field, under the Commis-

sion's orders, they went to other sources of supply for their requirements.

Later, and in accordance with its Report and Order effective February 1, 1958, the Commission ceased deducting underages occurring from wells which had not produced the previous months allowable and by so doing arrived at an allowable which represented the true demand for gas in the field.

There is nothing in the Gas Conservation Statute nor in the Commission's basic order which authorizes the Commission to deduct past underages from current allowables which were determined to be necessary to supply the market demand. Such a practice would permit, and did permit, one major pipeline company to reduce its takes and force the same reduction on every other pipeline company in the field regardless of the market demand requirements as a whole.

The Commission stated the fallacy in the old method of determining current allowables and set out the proper formula to be followed in its Report and Order effective February 1, 1958:

> "The market demand figure, once obtained, heretofore was used to determine the current allowable to be assigned by the Commission to the field. Prior to May, 1956, the current allowable was determined by taking the market demand, first adding thereto the cancelled underages for the previous month and then subtracting therefrom the amount of underproduction or adding thereto the amount of overproduction for the previous month. The result of the use of this method was that in actuality the runs or takes from the field controlled the amount of the current allowable; the control of the market demand and current allowable was entirely exclusively in the hands of the purchaser pipeline companies, and not in the Commission.

"The Commission, in an effort to take control, deviated from this formula of determining current allowables and for August, 1956, and subsequent months has fixed current allowables by taking the market demand figures, still based exclusively on nominations of the purchasers, and adding thereto the cancelled underproduction for the previous month. Actually, except for the consideration of a small amount of cancelled underproduction, the market demand, based solely on the nominations of the purchasers, was the current allowable for the field. The current allowable for each well was calculated in accordance with the provisions of paragraph (1) of the Basic Order for the Hugoton Gas Field. Each well continued to carry in addition to its current allowable such underproduction or overproduction as may have accrued to it. The result was the net allowable for each well. The sum total of the net allowables of the wells therein represented the net allowable for the entire field.

"To restate this formula, allowables in the future will be determined as follows: Consider the factors as discussed in paragrah 16 above and arrive at the market demand figure; add to it the cancelled underages, and the result will be the current monthly allowable. (This is the amount that is ratably apportioned to the wells each month.) To ascertain the net allowable for the field as a whole, add the total net underage or subtract the total net overage. The resulting figure is the field total net allowable on that date.

"The field as a whole is never exactly in balance. It is to be expected that for some periods of time it will have a total net underage and for other periods of time it will have a total net overage."

Much confusion has arisen because of misuse or misunderstanding of descriptive terms. The briefs of appellees in setting out comparative schedules for the court's

consideration confuse nominations with the Commission's finding of market demand and confuse current allowables with net allowables.

The current allowable, which is spread to all of the wells in the field, consists of the market demand as found by the Commission plus canceled underages for the previous month. The practice of adding cancelled underages is in accordance with the basic order and does not appear to be challenged.

The net allowable consists of the current allowable plus underages pertaining to specific wells which have not been cancelled. Such underages have been allocated in past months and was only available to the wells to which it was previously allocated. Such wells have an opportunity to produce the underage in addition to the current allowable if they can do so before the specified time for cancellation.

The Commission's method of determining current allowables, as stated above, complies with the law and the basic order.

The appellees contend that the Commission was influenced in its determinations by the fact that gas from the Kansas-Hugoton Field was draining or would drain into the Guymon-Hugoton Field in Oklahoma, and be wasted or lost insofar as the Kansas well owners and royalty owners are concerned. This was a proper matter for the Commission to consider under the circumstances.

The Commission found, and there was ample evidence to support the findings, that because of its past methods of determining market demand and calculating allowables, the producers in the Kansas-Hugoton Field had not been able to produce the market demand and the pipeline companies had been forced to go to other fields, in-

cluding the Guymon-Hugoton Field, to supply their market. The gas in the Guymon-Hugoton Field was being depleted and the pressure was declining at a much faster rate than in the Kansas-Hugoton Field. Drainage is bound to result.

This court would not place its approval on an order of the Commission which had as its purpose the drainage of gas from Oklahoma into Kansas. However, the Commission should not be criticized for correcting an improper method of establishing allowables which created a situation under which Kansas gas was caused to drain into Oklahoma.

There is no quarrel or conflict of jurisdiction between the two states. The Oklahoma authorities have done nothing to create the unfortunate situation which exists in the Kansas-Hugoton Field. The situation was created by the allowable orders of the Kansas Commission and should be corrected by it insofar as reasonably possible under the law.

The appellees contend that the change in the Commission's method of calculating allowables will cause inequitable or unfair taking among the producers in the field. The right of the pipeline companies to challenge matters which do not affect them but affect only the producers and royalty owners is somewhat questionable. The producers have not participated in the litigation, but the royalty owners have filed extensive briefs in support of the Commission's orders. We will, however, discuss the contention.

The Commission has three responsibilities under the Gas Conservation Statute. It must first of all prevent waste of the natural resource. It must allow sufficient production to meet the market demand if such can be done without waste. It must protect correlative rights.

In a gas field such as the Kansas-Hugoton where five major companies are taking gas through separate pipelines not connected to the same wells, the responsibilities placed upon the Commission will clash. If the market demand cannot be supplied without waste, or if correlative rights cannot be protected without waste, or if correlative rights cannot be protected without unduly restricting production needed for the market demand, one of the three, waste, market demand, or correlative rights, must suffer. The dominate purpose of the Gas Conservation Statute is to prevent waste. (*Kansas-Nebraska Natural Gas Co. v. State Corporation Commission*, 169 Kan. 722, 222 P.2d 704.)

The Commission cannot require or guarantee that each well owner will produce and sell his entire allowable. The Commission is required to afford each owner the "right or opportunity" to produce his share. As far as the Commission's duty under the basic order goes, it is fulfilled when each owner is legally "free to produce" and not denied the "right or opportunity" to produce his allowable.

The Commission could not be required to shut in an entire gas field to protect correlative rights where some of the producers desired to cease production and hold a gas field for a reserve. The Commission could not be required to unduly restrict production in a gas field because some producers desired to deplete the gas as a very low rate regardless of the reason.

When waste, market demand, and correlative rights are in conflict the Commission must determine which is to be given preference. If the decision of the Commission is supported by evidence, the courts cannot interfere.

The orders of the Commission, under consideration, are not subject to the objection that they do not properly

protect correlative rights under the facts disclosed by the record.

The appellees contend that the orders of the Commission violate the commerce clause of the federal constitution and the Natural Gas Act.

Our attention is called to the fact that the subject of regulating interstate commerce is committed by the United States Constitution to the control of the federal government. (*Oklahoma* v. *Kansas Nat. Gas Co.*, 221 U.S. 229, 55 L. Ed. 716, 31 S. Ct. 564; *Penna.* v. *West Virginia*, 262 U.S. 553 67 L. Ed. 1117, 43 S. Ct. 658; and *Penna. Gas Co.* v. *Pub. Service Comm.*, 252 U.S. 23, 64 L. Ed. 434, 40 S. Ct. 279.) Also, that the states have no authority, even in the absence of federal legislation, to regulate sales of gas for transportation and resale in interstate commerce. (*Missouri* v. *Kansas Gas Co.*, 265 U.S. 298, 68 L. Ed. 1027, 44 S. Ct. 544; *Pub. Util. Comm.* v. *Attleboro Co.*, 273 U.S. 83, 71 L. Ed. 549, 47 S. Ct. 294; and *State Comm'n* v. *Wichita Gas Co.*, 290 U.S. 561, 78 L. Ed. 500, 54 S. Ct. 321.) We are further informed that the states cannot so regulate under its police power as to place an undue burden on interstate commerce. (*Dahnke-Walker Co.* v. *Bondurant*, 257 U.S. 282, 66 L. Ed. 239, 42 S. Ct. 106; and *Lemke* v. *Farmers Grain Co.*, 258 U.S. 50, 66 L. Ed. 458, 42 S. Ct. 244.)

No one appears to question these general propositions of law. However, they are not applicable here. The Commission's orders are not directed to the pipeline companies. The pipeline companies are not required to do anything, neither are they restricted in any way. None of the pipeline companies, except Panhandle, claim they are not able to take enough gas under the Commission's order to meet their present market demands. Panhandle is before this court in support of the Commission's action.

The facts in this case present a much different situation than those which existed in *Northern Natural Gas Co. v. State Corp. Comm'n of Kansas*, 372 U.S. 84, 9 L. Ed. 2d 601, 83 S. Ct. 646. In the Northern Natural Gas case the Commission's order was directed to the pipeline company in an attempt to force it to take gas ratably from the wells to which it was connected in the Kansas-Hugoton Field.

The Commission's orders now before us are addressed only to the producers. The producers are not complaining and the royalty owners are supporting the Commission's action. The Commission's orders in no way attempt to regulate the sale or transportation of gas. The Supreme Court of the United States clearly stated the applicable law in *Champlin Rfg. Co. v. Commission*, 286 U.S. 210, 76 L. Ed. 1062, 52 S. Ct. 559:

> "Plaintiff contends that the Act and proration orders operate to burden interstate commerce in crude oil and its products in violation of the commerce clause. [U.S. Const. art. I, §8.] It is clear that the regulations prescribed and authorized by the Act and the proration established by the commission apply only to production and not to sales or transportation of crude oil or its products. Such production is essentially a mining operation and therefore is not a part of interstate commerce even though the product obtained is intended to be and in fact is immediately shipped in such commerce. *Oliver Iron Co. v. Lord*, 262 U.S. 172, 178. *Hope Gas Co. v. Hall*, 274 U.S. 284, 288. *Foster Packing Co. v. Haydel*, 278 U.S. 1, 10. *Utah Power & Light Co. v. Pfost*, supra. No violation of the Commerce clause is shown." (p. 235.)

Appellees contend:

> "It is abundantly clear . . . that the jurisdiction over sales of natural gas for resale in interstate commerce pursuant to the National Gas Act is exclusively in the Federal Power Commission. The National Gas

> Act was passed pursuant to the Commerce Clause contained in the United States Constitution and obviously was intended to occupy the entire area—the area involved in the instant appeals."

The Natural Gas Act and the decisions do not support the contention. Congress has not occupied the field in the area of state control of the production of natural gas. The Natural Gas Act specifically exempts from its coverage the production or gathering of natural gas. (15 U.S.C.A. § 717b.)

In *Panhandle Pipe Line Co.* v. *Comm'n*, 332 U.S. 507, 92 L. Ed. 128, 68 S. Ct. 190, the court reviewed the legislative history of the Natural Gas Act and said:

> ". . . Three things and three only Congress drew within its own regulatory power, delegated by the Act to its agent, the Federal Power Commission. These were: (1) the transportation of natural gas in interstate commerce; (2) its sale in interstate commerce for resale; and (3) natural gas companies engaged in such transportation or sale." (p. 516.)

The court further said:

> "Moreover, this unusual legislative precision was not employed with any view to relieving or exempting any segment of the industry from regulation. The Act, though extending federal regulation, had no purpose or effect to cut down state power. On the contrary, perhaps its primary purpose was to aid in making state regulation effective, by adding the weight of federal regulation to supplement and reinforce it in the gap created by the prior decisions." (p. 517.)

The regulation of the production of gas was clearly left within the jurisdiction of the states.

The appellees last contend that the orders of the Commission violate the fourteenth amendment to the United

States Constitution which provides, ". . . nor shall any State deprive any person of life, liberty, or property, without due process of law; . . ." and article 1, section 10 which provides, "No State shall . . . pass any . . . Law impairing the Obligation of Contracts. . . ."

Appellee's contention appears to be bottomed on the proposition that they have contracts to purchase the gas produced from certain leases in the field and they therefore have the right to determine the allowable production therefrom through their nominations, without interference by the Commission. Also, that their gas purchase contracts have various provisions which may be affected if their ability to determine the allowables is disturbed.

Individuals cannot by private contracts destroy the right of the state to exercise reasonable police power for the welfare of the public. It has been said, ". . . that an exercise of public policy cannot be resisted because of conduct or contracts done or made upon the faith of former exercises of it, upon the ground that its later exercises deprive of property or invalidate those contracts. *Louisville & Nashville R.R. Co.* v. *Mottley*, 219 U.S. 467 [55 L. Ed. 297, 31 S. Ct. 265, 34 L.R.A. (N.S.) 671.]" (*Thornton* v. *Duffy*, 254 U.S. 361, 369, 65 L. Ed. 304, 41 S. Ct. 137.) (See also, 16 C.J.S., §§ 180-182, 913 and 917, Constitutional Law; *Phillips Petroleum Co.* v. *Jenkins*, 297 U.S. 629, 80 L. Ed. 943, 56 S. Ct. 611; *Bennett* v. *Corporation Commission*, 157 Kan. 589, 142 P.2d 810; *Champlin Rfg. Co.* v. *Commission*, 286 U.S. 210, 76 L. Ed. 1062, 52 S. Ct. 559, 86 A.L.R. 403.) The appellees do not complain that the production of gas is being over-regulated by undue restrictions. They rather complain that the field is being under-regulated. Private individuals cannot by private contracts obtain a vested right in a police or public welfare statute. The Kansas Legislature could repeal the

Gas Conservation Statute if it thought such action advisable.

There are no purchase contracts shown in the record. The standard gas purchase contracts which have been before this court contain a provision making the contract subject to all present and future valid orders of regulatory bodies.

There is no statute or provision in the basic order providing that, regardless of the evidence presented at the market demand hearings, the Commission must allow past under production to control future allowables. The Gas Conservation Statute and basic order both require the Commission to determine the market demand and establish current allowables based on the evidence presented at the market demand hearings.

The Commission is, and of necessity, must be, free to correct past errors. Orders may have been entered with full confidence that they would effectuate the legislative mandate, but twelve years of irrefutable experience demonstrated that something was wrong.

In *Continental Investment Corp.* v. *State Corporation Comm.*, 156 Kan. 858, 137 P.2d 166, this court said that:

> ". . . Of necessity all administrative rules of official boards are experimental, and their wisdom and justice or lack of it may only be revealed by trial and error. That is the main reason the legislature conferred on such official boards the power to make rules having temporarily the force of law. Otherwise there would be no excuse for the legislature placing that responsibility on an official board when the power and duty to legislate is vested in the legislature itself. The legislative device of assigning to official boards or commissions the powers to make administrative rules governing matters of public con-

cern, with authority to change those rules as experience may justify, is a settled policy in American jurisprudence. . . ." (p. 866.)

In reviewing another rule of the Commission, under the Gas Conservation Act, this court held that:

". . . [The] rules and regulations of the commission are never *res judicata*. Should bad consequences follow from such an order being made the commission might change it to meet conditions as they exist." (*Aylward Production Corp. v. Corporation Commission*, 162 Kan. 428, 440, 176 P.2d 861.)

Furthermore, the orders before the Commission did not repeal or change its basic rules or regulations. There never was a rule containing the word "nominations," much less saying that nominations had to be accepted as the market demand. There never was a rule implying that the Commission was required to reduce its finding of market demand by the amount of past under-production.

We find nothing in the record which would justify the district court's judgment setting aside the orders of the Commission.

The judgment is therefore reversed with instructions to dismiss the petitions for review challenging the allowable orders of the Commission for gas production in the Kansas-Hugoton Field entered prior to and including October, 1957, and with directions to approve the allowable orders entered during the period November, 1957, through January, 1959, inclusive.

APPROVED BY THE COURT.

APPENDIX "B"

THE SUPREME COURT OF KANSAS
TOPEKA

January 3, 1964

TO ALL ATTORNEYS OF RECORD RE: CASES No. 41,515 - 41,516 - 41,555 - 41,556 - 42,038 - 42,175 - 42,176 - 42,185 - and 42,230

Gentlemen:

All motions for rehearing filed in the above numbered cases are this date Denied.

Yours truly,

/s/ James R. James
James R. James
Clerk

APPENDIX "C"

Journal Entry of Judgment.

"IN THE DISTRICT COURT OF FINNEY COUNTY, KANSAS.

NORTHERN NATURAL GAS COMPANY, a Corporation, Petitioner, vs. THE STATE CORPORATION COMMISSION OF THE STATE OF KANSAS, Respondent, SOUTHWEST KANSAS ROYALTY OWNERS ASSOCIATION, AND PANHANDLE EASTERN PIPE LINE COMPANY, Intervenors.	Case No. 10470.

JOURNAL ENTRY AND JUDGMENT.

"Petition for judicial review filed herein by Northern Natural Gas Company came regularly on for argument herein on October 15, 1958, before the Honorable Roland H. Tate, Judge of the District Court of Finney County, Kansas. Petitioner, respondent, and the intervenors were present and represented by their counsel of record.

"Petition for judicial review herein was timely filed herein with respect to general 'Order and Report' of the State Corporation Commission effective February 1, 1958, and with respect to the 'Interim Proration Orders and Reports' finalized by the aforementioned general 'Order and Report', such interim orders having been entered by

said Commission for the months from and including May, 1956, to and ending with the month of November, 1957; that such 'Order and Report' and such 'Interim Orders' finalized therein set forth as a matter of policy how said State Corporation Commission expected to determine the market demand for Kansas Hugoton Field gas in any given proration period.

"At the time of argument, petitioner Northern Natural Gas Company filed its brief. At the conclusion of the argument, the court granted time to the State Corporation Commission and to Intervenors to file responsive briefs, after which the Court allowed petitioner Northern Natural Gas Company time to file a reply brief. All such briefs have been filed within the time allotted, or as extended by the Court.

"The court after having reviewed the files and pleadings and the transcript of proceedings filed herein, having heard the arguments of counsel for the respective parties and having studied the briefs submitted by the respective parties finds that the 'Order and Report' of the State Corporation Commission effective February 1, 1958, is void and should be set aside.

"The court further finds that the 'Interim Proration Orders and Reports' of said Commission for the months beginning May, 1956, and ending November, 1957, are void and should be set aside insofar as the determination of market demand and allowables set forth therein are in excess of the market demand and allowables for such proration periods covered thereby which market demand would have been determined and allowables would have been established under the method of determining market demand, and calculating allowables, used by said Commission in said field prior to May, 1956.

"It Is, Therefore, Ordered, and It Is the Judgment of the Court That the 'Ordor and Report' of said Commission effective February 1, 1958, is hereby set aside.

"It Is Further Ordered and It Is the Judgment of the Court That the 'Interim Probation Orders and Reports' of said Commission for the months beginning May, 1956, and ending November, 1957, be and they are hereby set aside insofar as the determinations of market demand and allowables set forth therein are in excess of the market demand and allowables for such proration periods covered thereby which market demand would have been determined and allowables would have been established under the method of determining market demand and calculating allowables used by said Commission in said field prior to May, 1956.

"Costs are taxed to the State Corporation Commission of the State of Kansas.

"Dated this 15th day of December, 1958, at Garden City, Kansas.

Roland H. Tate,
District Judge."

APPENDIX "D"

NORTHERN NATURAL GAS COMPANY, Petitioner, vs. THE STATE CORPORATION COMMISSION OF THE STATE OF KANSAS, Respondent.	Cases Numbered 10,589, 10,590, 10,600, 10,602, 10,611.

Journal Entry of Judgment.

Now on this 18th day of February, 1959, the same being a regular judicial day of this court, comes on for hear-

ing the above captioned petitions for judicial review filed herein by Northern Natural Gas Company before the Honorable Roland H. Tate, Judge of the District Court of Finney County, Kansas, petitioner and respondent being present and represented by their counsel of record. Panhandle Eastern Pipe Line Company having previously appeared specially for the sole purpose of objecting to the Court's jurisdiction in cases numbered 10,589, 10,590 and 10,600, was present and appeared specially by its counsel of record to object to the court's jurisdiction with regard to cases numbered 10,602 and 10,611.

Whereupon argument was had to the court on Panhandle Eastern Pipe Line Company's objections to jurisdiction. And the court having heard argument of counsel and being duly advised in the premises finds: That such objections should be and the same are hereby overruled.

Whereupon motions to dismiss cases numbered 10,602 and 10,611, by the State Corporation Commission of the State of Kansas come on for argument and the court having heard argument of counsel, having examined briefs submitted, and being duly advised in the premises finds that such motions to dismiss should be and the same are hereby overruled.

Thereupon Panhandle Eastern Pipe Line Company filed its Cross-Petition and its motion for separately stated findings of fact and conclusions of law in each case.

The motions for separately stated findings of fact and conclusions of law were argued by counsel and by the court overruled.

Whereupon the parties announce ready and the court proceeds to hear argument on such petitions for judicial review. The Court having reviewed the files and pleadings and the transcript of proceedings filed herein, having

heard the arguments of counsel of the respective parties and having studied briefs submitted, finds that the Commission market demand order of October 1, 1958, and its proration orders and reports for the months beginning October, 1958, and ending January, 1959, inclusive, are void and should be set aside insofar as the determination of market demand and allowables set forth therein are in excess of the market demand and allowables for such proration period covered thereby, if such market demand had been determined and allowables had been established under the method of determining market demand and calculating allowables, used by said commission in said Hugoton Field prior to May, 1956.

It Is, Therefore, Ordered and it is the judgment of the Court that the market demand order of October, 1958, and the proration orders for the months beginning October, 1958, and ending January, 1959, both inclusive, of the State Corporation Commission be and they are hereby set aside insofar as the determinations of market demand and allowables set forth therein are in excess of the market demand and allowables for such proration period and months covered thereby determined and calculated in the historic manner followed by the Commission prior to May, 1956.

Thereupon, Panhandle Eastern Pipe Line Company, appearing by its counsel of record, objected to the form of court's judgment which objection was overruled and it is so ordered.

Thereupon, the State Corporation Commission of the State of Kansas and Panhandle Eastern Pipe Line Company appearing by their respective counsel of record move the court for a new trial and the court after listening to the arguments and statements of counsel and being duly advised in the premises finds that the said motions should be and the same are hereby overruled. It Is So Ordered.

Roland H. Tate, Judge.

APPENDIX "E-1"

August, 1956, Interim Allowable Order.

Dated August 20, 1956, Issued August 29, 1956

BEFORE THE STATE CORPORATION COMMISSION OF THE STATE OF KANSAS

In the matter of determining the market demand for natural gas for the Hugoton Gas Field in Kearny, Finney, Grant, Haskell, Morton, Stevens, Seward, Stanton and Hamilton Counties, Kansas, the deliverability and acreage attributable to each of the respective wells therein, and fixing gas production percentages and quotas for wells within said field for the proration period extending from April 1, to September 30, 1956, both inclusive.	Docket No. 51,342-C (C-4888) Conservation Division

Interim Order.

Now on this 20th day of August, 1956, the above-entitled matter comes before the Commission for consideration and determination of a schedule of production allowable for wells in the Hugoton Gas Field for the month of August, 1956, and the Commission finds:

1. That after notice as provided by the statutes and rules and regulations, the above-entitled matter was heard by the Commission at Wichita, Kansas, on March 30, 1956 some evidence taken thereon, and the matter con-

tinued to a date to be later determined. Thereafter said matter was set for further hearing on Friday, April 27, 1956, at the Allis Hotel, Wichita, Kansas, continued to May 24, June 29, July 20, and again continued to August 30, 1956, at the Lassen Hotel, Wichita, Kansas.

2. That information presented at the public hearing on Dockets Nos. 51,342-C (C-4888) and 51,488-C (C-4916), indicates that drainage from the Kansas portion of the Hugoton Gas Field is occurring or will occur because the present rates of production in Oklahoma and Texas are approximately twice the present rate of production in Kansas.

3. That under existing circumstances and trends, a question has arisen whether a developed lease in the Kansas portion of the field will be allowed to ultimately produce the amount of gas underlying such developed lease and to currently produce proportionately with other developed leases in the Hugoton reservoir.

4. That in view of the situation aforesaid, in performance of its statutory duty in protection of correlative rights of owners of developed leases in Kansas and prevention of discrimination against them, and in prevention of waste of a great natural resource of the State, it is necessary that the Commission make adjustments in the allowed rate of production from the Kansas portion of the Hugoton Gas Field.

5. That an interim order should be entered herein determining a schedule of production allowable for wells in the Hugoton Gas Field for the month of August, 1956, but determinative of no other issue in the matter referred to above now pending before the Commission.

6. That at the hearing referred to in Finding (1), nominations filed with the Conservation Division by pur-

chasers of the gas produced in the Hugoton Field for the month of August, 1956, amount to 27,062,000 M.c.f., subsequently amended to 27,480,500 M.c.f.; that the reasonable market demand for gas produced from said field in Kansas during said month is determined to be 27,480,500 M.c.f. plus or minus the net underages or overages; that production in excess of said amount would result in waste as that term is defined by the Statutes of the State of Kansas; that under the Basic Order No. 44-3-21 entered in Docket No. C-164, as amended, the net allowable for any given period consists of the reasonable market demand for that period plus or minus the net underage or overage as the case may be, and that after giving effect to such overage or underage as shown by the records of the Commission as of August 1, 1956, should be fixed at 37,496,774 M.c.f.; that in order to prevent waste the production of natural gas from said common source of supply should be restricted or limited to said amount for said period.

7. That in order to protect the respective correlative rights of the producers and other interested parties having a right to withdraw gas from the common reservoir and in order to permit the wells and leases therein to produce currently proportionately so that each may ultimately produce approximately the amount of gas underlying it, production quotas for the several developed leases and wells should be established during said period in accordance with the Basic Order No. 44-3-21 entered in Docket No. C-164, as amended.

8. That the acreage attributable to, and the individual well deliverability factors of the several wells in said field are in the amounts and figures as set out in the August, 1956, allowable report which is attached hereto, marked Exhibit "A," and hereby referred to and made a part hereof

by reference; that the allocation of the allowed production within and between the wells in said common source of supply and the individual well production quotas should be made and established in the manner and form prescribed in said Basic Order No. 44-3-21, entered in Docket No. C-164, as amended, and when so made and established are in the amounts and figures as set out in said schedule Exhibit "A".

9. That such allowable should constitute the maximum permissible production from such wells and leases for the period covered by this order.

It Is, Therefore, by the Commission Ordered: That the market demand for natural gas from the Hugoton Gas Field located in Kearny, Finney, Grant, Haskell, Morton, Stevens, Seward, Stanton and Hamilton Counties, Kansas, for the month of August, 1956, is hereby determined to be 27,480,500 M.c.f. and the total net allowed production of natural gas from said field for said month of August, 1956, be and is hereby fixed at 37,496,774 M.c.f. and the same is hereby allocated among the several developed leases and wells in said field in the manner prescribed by said Basic Order No. 44-3-21 entered in Docket No. C-164, as amended; and when so distributed, each well's production quota is in the amount set out in the schedule, Exhibit "A" attached hereto; that production of natural gas from said common source of supply and from each of the developed wells and leases therein shall be limited during the period covered hereby to the respective allowables established for the said field and each of the wells therein.

It Is Further Ordered: That the acreage and deliverability factors and current position of the wells as set out in schedule Exhibit "A", attached to this order, be, and the same are hereby adopted and established

The Commission retains jurisdiction of the subject matter and the parties for the purpose of entering such further order or orders as from time to time it may deem proper.

By the Commission It Is So Ordered.

Raymond B. Harvey,
(Seal) Secretary

Attest: A true copy. Raymond B. Harvey, Secretary, State Corporation Commission, State of Kansas.

APPENDIX "E-2"

November, 1957, Interim Allowable Order.

Dated December 18, 1957.

Issued January 14, 1958.

BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

In the matter of determining the market demand for natural gas for the Hugoton Gas Field in Kearny, Finney, Grant, Haskell, Morton, Stevens, Seward, Stanton and Hamilton Counties, Kansas, the deliverability and acreage attributable to each of the respective wells therein, and fixing gas production percentages and quotas for wells within said field for the proration period extending from October 1, 1957, to March 31, 1958, both inclusive.	Docket No. 55,705-C (C-5792) Conservation Division

Interim Order.

Now on this 18th day of December, 1957, the above-entitled matter comes before the Commission (Marion

Beatty, Chairman; Harry G. Wiles and Richard C. Byrd, Commissioners) for consideration and determination of a schedule of production allowable for wells in the Hugoton Gas Field for the month of November, 1957, and the Commission finds:

1. That after notice as provided by the statutes and rules and regulations, the above-entitled matter was heard by the Commission at Wichita, Kansas, on September 27, 1957, evidence thereon taken and all parties afforded an opportunity to be heard.

2. That an interim order should be entered herein determining a schedule of production allowable to wells in the Hugoton Gas Field for the month of November, 1957, but determinative of no other issue in Docket No. 51,488-C (C-4916) now pending before the Commission.

3. That at the hearing referred to in Finding (1), nominations filed with the Conservation Division by purchasers of the gas produced in the Hugoton Field for the month of November, 1957, amount to 42,307,000 M.c.f., subsequently amended to 41,907,000 M.c.f.; that the reasonable market demand for gas produced from said field in Kansas during said month is determined to be 41,907,000 M.c.f. plus or minus the net underages or overages; that production in excess of said amount would result in waste as that term is defined by the Statutes of the State of Kansas; that under the Basic Order No. 44-3-21 entered in Docket No. C-164, as amended, the net allowable for any given period consists of the reasonable market demand for that period plus or minus the net underages or overages as the case may be, and that after giving effect to such underages or overages as shown by the records of the Commission as of November 1, 1957, should be fixed at 94,322,309 M.c.f.; that in order to prevent

waste the production of natural gas from said common source of supply should be restricted or limited to said amount for said period.

4. That in order to protect the respective correlative rights of the producers and other interested parties having a right to withdraw gas from the common reservoir and in order to permit the wells and leases therein to currently produce proportionately so that each may ultimately produce approximately the amount of gas underlying it, production quotas for the several developed leases and wells should be established during said period in accordance with the Basic Order No. 44-3-21 entered in Docket No. C-164, as amended.

5. That the acreage attributable to and the individual well deliverability factors of the several wells in said field are in the amounts and figures as set out in the November, 1957, allowable report which is attached hereto marked Exhibit "A" and hereby referred to and made a part hereof by reference; that the allocation of the allowed production within and between the wells in said common source of supply and the individual well production quotas should be made and established in the manner and form prescribed in said Basic Order No. 44-3-21, entered in Docket No. C-164, as amended, and when so made and established are in the amounts and figures as set out in said schedule Exhibit "A".

6. That such allowable should constitute the maximum permissible production from such wells and leases for the period covered by this order.

It Is Therefore, by the Commission Ordered: That the market demand for natural gas from the Hugoton Gas Field located in Kearny, Finney, Grant, Haskell, Morton, Stevens, Seward, Stanton and Hamilton Counties, Kansas,

for the month of November, 1957, is hereby determined to be 41,907,000 M.c.f. plus or minus the net underages or overages, and the total net allowed production of natural gas from said field for said month of November, 1957, be and is hereby fixed at 94[illegible]2,309 M.c.f. and the same is hereby allocated among the several developed leases and wells in said field in the manner prescribed by said Basic Order No 44-3-21 entered in Docket No. C-164, as amended; and when so distributed, each well's production quota is in the amount set out in the schedule, Exhibit "A" attached hereto; that production of natural gas from said common source of supply and from each of the developed wells and leases therein shall be limited during the period covered hereby to the respective allowables established for the said field and each of the wells therein.

It Is Further Ordered: That the acreage and deliverability factors and current position of the wells as set out in schedule Exhibit "A", attached to this order, be, and the same are hereby adopted and established.

The Commission retains jurisdiction of the subject matter and the parties for the purpose of entering such further order or orders as from time to time it may deem proper.

By the Commission It Is So Ordered.

Raymond B. Harvey,

(Seal) Secretary.

Attest: A true copy. Raymond B. Harvey, Secretary, State Corporation Commission, State of Kansas.

APPENDIX "E-3".

BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

In the matter of determining the market demand for natural gas for the Hugoton Gas Field of Kearny, Finney, Grant, Haskell, Morton, Stevens, Seward, Stanton and Hamilton Counties, Kansas, the deliverability and acreage attributable to each of the respective wells therein, and fixing gas production percentages and quotas for wells within said field for the proration period extending from April 1, to September 30, 1956, both inclusive.	Docket No. 51,342-C (C-4888) Conservation Division
In the matter of determining the market demand for natural gas for the Hugoton Gas Field of Kearny, Finney, Grant, Haskell, Morton, Stevens, Seward, Stanton and Hamilton Counties, Kansas, the deliverability and acreage attributable to each of the respective wells therein, and fixing gas production percentages and quotas for wells within said field for the proration period extending from October 1, 1956, to March 31, 1957, both inclusive.	Docket No. 53,042-C (C-5171) Conservation Division
In the matter of determining the market demand for natural gas for the Hugoton Gas Field of Kearny, Finney, Grant, Haskell, Morton, Stevens, Seward, Stanton and Hamilton Counties, Kansas, the deliverability and acreage attributable to each of the respective wells therein, and fixing gas production percentages and quotas for wells within said field for the proration period extending from April 1, to September 30, 1957, both inclusive.	Docket No. 54,220-C (C-5454) Conservation Division
In the matter of Cities Service Gas Company, Colorado Interstate Gas Company, Hugoton Production Company, Kansas-Colorado Utilities, Inc., Kansas-Nebraska Natural Gas Company, Inc., Northern Natural Gas Company, Panhandle Eastern Pipe Line Company, Quinque Oil and Gas Production Company, United Carbon Company, Shallow Water Refining Company, to show cause	Docket No. 51,488-C (C-4916) Conservation Division

Report and Order of the Commission.

By the Commission:

1. This proceeding was initiated by the Commission by an order issued March 16, 1956, directed to purchasers of natural gas produced in the Kansas Hugoton Gas Field to show cause why they should not be required to take ratably from the various wells in the Hugoton Gas Field in the State of Kansas in order to prevent discrimination, uncompensated cognizable drainage, inequitable taking and waste as contemplated by the gas conservation statutes of the State.

2. A public hearing was duly held on March 30, 1956, at the Allis Hotel, Wichita, Kansas, at which appearances were entered on behalf of Cities Service Gas Company, Northern Natural Gas Company, Shallow Water Refining Company, Colorado Interstate Gas Company, Kansas-Nebraska Natural Gas Company, Inc., Panhandle Eastern Pipe Line Company, Kansas-Colorado Utilities, Inc., Hugoton Production Company, Quinque Oil and Gas Production Company, United Carbon Company, Inc. (Maryland), United Carbon Company, Southwest Kansas Royalty Owners Association, intervenor, and the Commission. That at said hearing this docket was consolidated for hearing purposes with Docket No. 51,342-C (C-4888) the market demand hearing for the Hugoton Gas Field for the proration period from April 1 to September 30, 1956; subsequently those dockets were consolidated for hearing purposes with subsequent market demand hearing dockets Nos. 53,042-C (C-5171), 54,220-C (C-5454) and 55,705-C (C-5792), all being heard on a common record. Further hearings were held on April 27, May 24, June 28, July 20, and August 30, 1956, April 23 and August 27 and 28, 1957, at which evidence and arguments were presented, at the

close of which the matter was taken under advisement by the Commission.

3. Extensive public hearings have been held in these dockets. The transcript of proceedings and exhibits is voluminous. Pertinent facts established by the history of the field, Commission records and the transcript of proceedings herein will be briefly stated.

4. The question presented for determination in these proceedings is two-fold: whether migration of gas may be occurring or is likely to occur from the Kansas portion of the Hugoton Gas Field to other portions of the field; remedial steps which may be and should be taken by the Commission to prevent loss of this valuable natural resource to Kansas and Kansas owners, and what corrective measures may be and should be taken by the Commission in performance of its statutory duty to prevent waste, protect correlative rights, and prevent unreasonable discrimination and inequitable withdrawals of gas from said field.

Evidence and Findings of Fact.

5. The Hugoton Gas Field of Kansas, located in nine southwestern counties of the state, is a part of a large natural gas reservoir which extends south across the Oklahoma Panhandle and into Texas. The largest portion of the field is in Kansas. Gas is found in porous limestone and dolomite in the Hugoton Gas Field. The thickness of the gas producing horizons varies considerably and they are not uniform as to porosity or permeability.

6. Early development in Kansas, prior to proration, was in an area approximately 20 miles north of the Kansas-Oklahoma state line and in Oklahoma in an area from 10 to 25 miles south of said state line. As a result of this early development, areas of reduced pressures or "pres-

sure "sinks" were created surrounding the early wells. Later the areas of early development were connected by production so that by 1956 there were relatively few remaining undrilled well locations.

7. The movement of gas within a common reservoir is governed by pressure differentials; the gas migrates from the areas of higher pressure to the areas of lower pressure. In its virgin state, the pressure within a common source of supply is the same, or practically the same, at all points. When gas is produced from a well, the pressure within the reservoir is reduced in the vicinity of the well bore. This causes gas in the formation to expand into the well. When a producing well is shut in, the pressure in the formation in the vicinity of the well will build up from that existing during production and this again tends to equalize the pressure within the formation and demonstrates that the continued migration of gas from high pressure to low pressure areas is occurring. Gas migrates within the reservoir from developed leases having higher pressures to other developed leases having lower pressures in accordance with the same principles which govern the movement of gas from the formation into the several well bores. If the migration or drainage of gas across property lines is not equalized by counter-drainage, the developed leases so drained will not ultimately produce approximately the amount of gas underlying them. The extent of the movement of gas between developed leases depends upon the magnitude of variation in pressures existing as between developed leases, the areas contained in such leases and the amounts of gas withdrawn. (Hugoton Proration Order, paragraph d).

Pressure History.

8. The virgin shut-in wellhead pressure of the entire Hugoton reservoir was approximately 435 p.s.i.g. A study

of the closed-in wellhead pressures by years reveals that by 1948 the arithmetic average closed-in wellhead pressure in the Kansas portion of the field was 385 pounds, while the corresponding figure for the Oklahoma portion of the field was 384 pounds, and the average pressure in the Texas portion of the field was 378 pounds. Until 1948, the pressure declined in the three states was about equal. But by 1954 the average wellhead pressure of Kansas wells was 366 pounds, a decrease of 19 pounds from 1948. At the same time the average Oklahoma wellhead pressure had declined to 340 pounds, a decrease of 44 pounds over the same period of time, while the Texas pressure had been reduced to 339 pounds, a decrease of 39 pounds. By 1956 the average wellhead pressure in Texas had decreased to 288 pounds, in Oklahoma to 316 pounds, while the Kansas average pressure was still as high as 356 pounds.

9. Pressure declines result from production of gas reserves and are also a measure of the rate of depletion of gas reserves. The gas reserves in the Oklahoma portion of the reservoir are being depleted approximately twice as fast as the gas reserves in the Kansas portion of the reservoir and the gas reserves in the Texas portion of the reservoir are being depleted at an even higher rate. Evidence further indicates that if the present trend continues, the arithmetic average closed-in wellhead pressure p.s.i.g. for wells one mile each side of the Oklahoma-Kansas state line will be as follows:

	Kansas	Oklahoma
1958	322	315
1959	317	306
1960	312	298
1961	307	290
1962	301	282

10. Evidence presented at the hearings on these dockets indicates that at the present time pressure differentials do exist between developed leases in the southern portion of the Kansas Hugoton Field and leases in the northern portion of the Oklahoma Field. While the actual amount of drainage from the Kansas portion of the field to the Oklahoma portion of the field is not at this time *cognizable*, the evidence shows that this drainage will become cognizable within a period of three or four years unless the takes of gas from the Kansas portion of the field are increased in sufficient amounts to stop the increasing difference between the pressures in the Kansas field and the Oklahoma field.

Interim Order.

11. During the course of the hearings herein, the Commission has issued its monthly proration orders and reports for the Hugoton Field, denominated Interim Orders. Each of these orders issued for the month of April, 1956, and subsequent months through November, 1957, has contained the following finding:

> "That an interim order should be entered herein determining a schedule of production allowable for wells in the Hugoton Gas Field for the month of (current month), but determinative of no other issue in the matter referred to above, now pending before the Commission."

12. In view of this clear and unquivocal language contained in the orders themselves, we interpret these orders to be final orders so far as they determined allowables for each month. As stated in the orders, they determined the monthly allowables but were determinative of *no other* issue pending in the dockets. No one of the Interim Orders issued by the Commission from April, 1956, through October, 1957, has been contested.

Market Demand Factors to Be Considered.

13. This Commission, as an arm of the State, has the power, in the interest of conservation, to enter such orders as may be necessary to prevent waste of natural resources and to protect correlative rights. The statute is clear that the Commission shall so regulate the taking of gas from any and all common sources of supply within this state as to prevent the inequitable or unfair taking from such common source of supply by any person, firm or corporation, and to prevent unreasonable discrimination in favor of or against any producer in any such common source of supply. The legislature said specially that the Commission in promulgating rules, regulations and formulas to attain such results should take into consideration certain conditions and then added "and such other factors, conditions and circumstances as may exist in the common source of supply under consideration at the time as may be pertinent." (G.S. 1949, 55-703).

14. From the evidence presented, it is apparent to the Commission that a determination of market demand based only on nominations reduces the allowables to a point where Kansas cannot produce the gas that could otherwise be produced in compliance with the basic order. It is necessary, therefore, that the Commission evolve a method of determining market demand and calculating allowables which will give effect to all the actual facts and conditions existing in the field rather than use solely the pipe line purchasers' nominations as the market demand.

15. In order for the Commission to properly administer and regulate the production of natural gas as required by statute the Commission must periodically determine the market demand for gas from the field. In addition to the general statutory duty imposed in this regard, the Hugoton

Proration Order, in paragraph "o" thereof, made the following finding:

> "o. At such time and place as the Commission shall fix, the Commission will, after notice, conduct a hearing to determine the market demand for natural gas from said field for the next six succeeding proration periods, or for such other period of time as the Commission shall prescribe, and at said hearing may determine any other questions which may properly and legally come before the Commission for consideration thereat, and a new schedule of production allowable for the wells in said field, based upon the determination made as a result of such hearing, shall be prepared and promulgated for the ensuing proration periods."

16. A review of the Commission's past allowable orders and the evidence presented in these dockets discloses that heretofore the nominations by the purchasers from the Hugoton Field have been used and considered by the Commission as the market demand for the field. However, the evidence presented in these dockets discloses that in many instances the aforesaid nominations did not approximate the market demand. Therefore, the Commission finds that it is necessary in determining the market demand for natural gas from the Hugoton Field, to consider, in addition to the nominations by the purchasers, the following factors:

(1) Takes from other sources of supply to which the purchasers are connected.

(2) The total markets for natural gas of all purchasers from the Kansas Hugoton Field; the rate of increase therein compared to the rate of increase in the takes fror the Kansas portion of the Hugoton Field.

(3) Takes from other sources of supply in Kansas.

(4) Any other factors, conditions and/or circumstances that would aid the Commission in establishing the market demand.

Calculation of Allowables.

17. The market demand figure, once obtained, heretofore was used to determine the current allowable to be assigned by the Commission to the field. Prior to May, 1956, the current allowable was determined by taking the market demand, first adding thereto the cancelled underages for the previous month and then subtracting therefrom the amount of underproduction or adding thereto the amount of overproduction for the previous month. The result of the use of this method was that in actuality the runs or takes from the field controlled the amount of the current allowable: the control of the market demand and current allowable was entirely and exclusively in the hands of the purchaser pipeline companies, and not in the Commission.

18. The Commission, in an effort to take control, deviated from this formula of determining current allowables and for August, 1956, and subsequent months has fixed current allowables by taking the market demand figures, still based exclusively on nominations of the purchasers, and adding thereto the cancelled underproduction for the previous month. Actually, except for the consideration of a small amount of cancelled underproduction, the market demand, based solely on the nominations of the purchasers, was the current allowable for the field. The current allowable for each well was calculated in accordance with the provisions of paragraph (1) of the Basic Order for the Hugoton Gas Field. Each well continued to carry in addition to its current allowable such underproduction or overproduction as may have accrued to it. The result was the net allowable for each

well. The sum total of the net allowables of the wells therein represented the net allowable for the entire field.

19. To restate this formula, allowables in the future will be determined as follows: Consider the factors as discussed in paragraph 16 above and arrive at the market demand figure; add to it the cancelled underages, and the result will be the current monthly allowable. (This is the amount that is ratably apportioned to the wells each month.) To ascertain the net allowable for the field as a whole, add the total net underage or subtract the total net overage. The resulting figure is the field total net allowable on that date.

The field as a whole is never exactly in balance. It is to be expected that for some periods of time it will have a total net underage and for other periods of time it will have a total net overage.

20. The Commission finds that in order to prevent waste, protect correlative rights and effectively prorate gas from this field, it will determine market demand as set out in paragraph 16 above and will continue to determine current and net allowables as set out in paragraph 19.

Balancing Period.

21. A study of the history of the monthly proration orders for the Hugoton Gas Field from April, 1956, through November, 1957, leads the Commission to the conclusion that their effect has been to put the field somewhat out of balance, and the Commission must take steps to restore balance to that field eventually or periodically. In order to accomplish this, the Commission recognized that it must prevent the excessive overproduction or excessive underproduction of the wells within the same common source of

supply. Therefore, the Commission, in Docket No. C-164, held a public hearing concerned with the advisability of amending paragraph "p" of the Hugoton Basic Proration Order and as a result of this hearing has restored a balancing period requiring the producers in the Hugoton Field to bring each well into balance at stated times as set out therein. The principle of the balancing period has been approved by this Commission numerous times in the past and the Supreme Court of the State of Kansas has at times in the past approved this principle.

22. Periodic balancing has the merit of preventing any wells from remaining excessively overproduced or excessively underproduced. It helps to enforce ratable takings as between all wells in the field. It also has the effect of encouraging producers and pipeline companies to produce and sell their total underages to companies in need of gas and encourage overproduced companies to buy from others to fill their needs.

23. In conformance with the views heretofore expressed, it is, therefore, ordered:

(1) That future determinations of market demand for natural gas from the Kansas Hugoton Field will give effect to the following factors, in addition to nominations of purchasers:

A. Takes from other sources of supply to which the purchasers are connected.

B. The total markets for natural gas of all purchasers from the Kansas Hugoton Field; the rate of increase therein compared to the rate of increase in the takes from the Kansas portion of the Hugoton Field.

C. Takes from other sources of supply in Kansas.

D. Any other factors, conditions and or circumstances that would aid the Commission in establishing the market demand.

(2) That future monthly net allowables for natural gas from the Kansas Hugoton Field will be determined by adding cancelled underages to the market demand figure as calculated above, and to that total add the total net underage or subtract the total net overage. (See paragraph 19) The future current monthly allowable to be determined as set out in paragraphs 18 and 19.

(3) The Commission retains jurisdiction of the subject matter and the parties for the purpose of entering such further order or orders as from time to time it may deem proper.

(4) That this Report and Order shall take effect on February 1, 1958, and that the Secretary of the Commission shall mail copies thereof to all interested parties.

Marion Beatty, Chm., Specially Concurring; Harry G. Wiles, Comr.; Richard C. Byrd, Comr., Specially Concurring.

Raymond B. Harvey,

(Seal) Secretary.

Specially Concurring Opinion.

By Chairman Beatty.

In our findings and Memorandum Opinion, we have reached three basic conclusions: They relate to (1) drainage (2) determination of allowables and (3) balancing period.

(1) *Drainage.*

The takes from the Hugoton Field as a whole, and its pressure history, indicate that although the drainage, if any, about which the intervenors complain is negligible at the present time, if the past and present rates of withdrawal from the Kansas portion of the Hugoton Field, as

compared with rates of withdrawal from the Oklahoma portion of the Hugoton Field, continue in the future, there will be drainage of gas from the Kansas portion of the field to the Oklahoma portion thereof. We have made no findings or conclusions as to whether this drainage eventually will be moderate, considerable or devastating. The evidence was inconclusive.

The evidence in regard to the pressure pattern and drainage has been an education and I wish to call it to the attention of the Kansas Legislature for whatever remedial action, if any, the Legislature may see fit to take.

I specifically concur in the findings of fact we have made in regard to drainage, paragraphs 7 to 10 inclusive, but I for one, have never been satisfied that the present statutes give to this Commission the necessary power and authority to remedy this interstate situation, if a remedy there be.

(2) *Determination of Allowable.*

The Commission has concluded that under the system of setting allowables for the Hugoton Field which was in effect up until April, 1956, it was the pipeline companies that were in fact setting allowables for the Hugoton Field. The Commission had the practice of accepting pipeline companies' nominations as a starting point and if these proved to be over or under the actual runs, the market demand for the following month was adjusted accordingly so that the runs, which also were wholly controlled by the pipeline companies, actually were determining allowables.

I concur with the decision made herein to take not only nominations but certain other factors into consideration in setting these monthly allowables, as we have discussed in paragraphs 14 to 19, inclusive, above, so that

the setting of allowables will henceforth be exercised by the State Corporation Commission rather than the industry to be regulated.

(3) *Balancing period.*

I wish to concur in the restoration of a balancing period as discussed in paragraphs 21 and 22 above. A balancing period was part of the original Basic Order for this field and one is included in most other such basic orders. It acts as a governor and helps to assure that each well will be produced ratably with other wells in the field.

Discussion.

Intervenors have urged us to continue the practice of setting high monthly allowables which was started by the Commission in April, 1956. They have asked us to increase the allowables 25% more even though the Commission since April, 1956, has been allowing somewhat more than the market actually absorbed. This benefited pipeline companies in need of gas, usually those overproduced. It was coercive on those who did not have proportional markets, those usually underproduced. It has not been effective so far, but if and when it has the intended effect of forcing higher takes, it will allow the producers and royalty owners to convert their minerals into cash more quickly. The only visible results in the last nineteen months, however, have been no increase in takes and a gradually mounting net underage. The net allowable is now 52 million M.c.f. higher than the amount that will be actually taken and marketed this month, but if it is carried for awhile, the pipeline companies may find a market for it.

Since my tenure on this Commission, beginning ten months ago, I have been deeply concerned about what is

a reasonable net overage or underage for the field and how far the net balance may fluctuate in either direction before the Commission would be obliged to check it. Testimony of the experts indicates that the present 52 million M.c.f. net underage is not a serious imbalance if the field is eventually brought into balance by increased takes or gradually reduced allowables. This was one of the considerations that caused the Commission to reject the request of some of the parties that we start over and recalculate the allowables for every month back through April 1956.

I wish to point out that neither the Order and Memorandum Opinion unanimously adopted by the Commission nor the formula adopted necessarily commit this Commission to set artificially high allowables, or allowables at a figure which eventually will permit equalization of pressures between Kansas and Oklahoma, or allowables that will permit a program of planned depletion of the field in thirty years or any given number of years.

It is impossible to prorate the field to fit the pace of both those who want less and those who want more gas. The result has to be somewhere in between and the Commission has some discretion.

If allowables are set high enough, or if high allowables continue long enough, admittedly the result will be to force underproduced pipeline companies to take and dispose of more Kansas gas or suffer cancellation of their underproduced allowables. The higher the allowables, the greater the coercion, the greater the cancellations and the more severe the penalties. I feel that the Commission needs a clearer mandate from the Legislature as its authority to execute this kind of a program for the purpose of forcing up the runs.

I am most heartily in favor of Kansas resources being harvested and marketed by Kansas people and Kansas

industries, rather than by Oklahomans, and my sympathies are with the Kansas royalty owners, some of whom have had to sell their birthright to the pipeline companies for a mess of pottage (as low as 3¢ to 8¢ per M.c.f.) and are now having the pottage rationed to them in small spoonfuls, but whether we, a conservation commission, should try to force the sale and depletion of our natural gas at today's low prices, raises another question. Gas is a most desirable fuel. America's reserves of natural gas are being depleted one hundred times faster than our coal reserves. Aside from the question of our authority and jurisdiction to execute such a program under present conservation statutes, such a program may, in retrospect, prove to be very unwise, considering the welfare of the state as a whole.

Marion Beatty,
Chairman.

Specially Concurring Opinion.

By Commissioner Byrd.

I concur with the findings of fact as set forth in the Commission's report and order. I believe that provisions contained in the order relating to the determination of market demand and the factors to be considered in such determination, if realistically considered by the Commission in the future, can and will result in the prevention of drainage and the protection of correlative rights. However, because of the seriousness of the situation that would be presented by the extrapolation of the present rates of pressure decline of the wells in this field along the Oklahoma-Kansas state line, I feel that the Commission is justified at this time in taking more positive steps to prevent this situation from becoming a reality. The evidence presented indicated, and the Commission's report and or

der so finds, that based on the present rates of withdrawal from the Kansas and Oklahoma portions of the Hugoton Field, the average closed-in wellhead pressure for the wells in Oklahoma along the state line are decreasing and will decrease approximately 9 pounds per year; the wells in Kansas along the state line will decrease approximately 5 pounds per year. If those conditions continue to exist, in 1962 the arithmetic average closed-in wellhead pressure for the wells one mile on each side of the Kansas-Oklahoma state line will be 301 pounds in Kansas and 282 pounds in Oklahoma; a pressure differential of 19 pounds. With this differential in pressure, a serious drainage problem would exist.

The threat of this situation's existing is imminent and has been clearly called to the attention of the Commission. To avoid it, without undue hardships being imposed on the purchasers of gas, immediate action must be taken. To delay the institution of preventive measures until this situation actually exists disregards the obligations imposed upon the Commission by the Gas Conservation Statute, particularly when we have been put on notice and are aware of the impending situation. The Statutes grant this Commission broad powers. Should these powers not be sufficient to cope with this imminent threat of drainage, it is best that we become aware of this statutory deficiency before the drainage situation becomes a reality.

The evidence presented in these dockets shows that the demands for gas of the major gas purchasers in the Kansas Hugoton Field have increased substantially the last ten years. The total sales of gas by these companies has increased disproportionately with their withdrawals of gas in the Kansas Hugoton Field. All industry predictions are that the total demand for natural gas will continue to increase in the future. Based on this evidence,

I believe the Commission is justified in determining at this time minimum allowables, based upon past and projected market demands of the gas purchasers, for the next 5 years. These minimum allowables should be determined now so that by the year 1962 the minimum allowables would permit the withdrawal of gas from the Kansas portion of the Hugoton Field at a rate equal to the withdrawal of gas from the Oklahoma portion of the Hugoton Field. In other words, the Commission should now establish a goal, and determine minimum allowables by year for the future, that will bring a halt to the steadily increasing pressure drop at the Kansas-Oklahoma state line by the year 1962.

Such a determination is not only justified by the evidence presented in these dockets, and required of us by the Statutes of Kansas, but would better able the gas purchasers to adjust their takes of gas from the various sources of supply to which they are connected in order to meet their market requirements. If our goal is to prevent this future drainage situation, and I believe the Commission's order and report adopts that goal, then I believe the industry should be clearly informed of this intention. Accomplishment of that goal should be done in a method or manner least burdensome to the companies.

As I previously stated, I believe that the provisions of the Commission's order can accomplish the goal that is desired; however, the establishment of a planned depletion allowable as set forth above would, in my opinion, be a more effective means of accomplishing this end.

Richard C. Byrd,
Commissioner

APPENDIX "F"

SUPREME COURT STATE OF KANSAS

Nos. 42,175, 42,176, 42,185, 42,230 (Consolidated)

COLORADO INTERSTATE GAS COMPANY, NORTHERN NATURAL GAS COMPANY, CITIES SERVICE GAS COMPANY, and KANSAS-NEBRASKA NATURAL GAS COMPANY, *Appellants* and *Cross-Appellees* v. THE STATE CORPORATION COMMISSION OF THE STATE OF KANSAS, *Appellee* and *Cross-Appellant*, SOUTHWEST KANSAS ROYALTY OWNERS ASSOCIATION, and PANHANDLE EASTERN PIPE LINE COMPANY, each a corporation, *Appellees*.

No. 42,038

SOUTHWEST KANSAS ROYALTY OWNERS ASSOCIATION, a corporation, *Appellee* and *Cross-Appellant* v. THE STATE CORPORATION COMMISSION OF THE STATE OF KANSAS, *Appellee*, PANHANDLE EASTERN PIPE LINE COMPANY, a corporation, *Appellee* and *Cross-Appellant*, CITIES SERVICE GAS COMPANY, *Appellant* and *Cross-Appellee*, NORTHERN NATURAL GAS COMPANY, and KANSAS-NEBRASKA NATURAL GAS COMPANY, each a corporation, *Appellees* and *Cross-Appellants*.

SYLLABUS BY THE COURT

1. GAS—*Judicial Review of Commission's Orders.* The statute, G. S. 1949, 55-606, providing for judicial review of orders made by the State Corporation Commission in administering the Gas Conservation Act, contemplates but one judicial review of such orders regardless of the number of parties aggrieved.

2. COURTS—*Concurrent Jurisdiction—Court Acquiring Jurisdiction First.* The district court, which first acquires jurisdiction of a petition to review an order of the Commission, has exclusive jurisdiction of the

subject matter and the rights of the parties affected thereby, and a court of concurrent jurisdiction is without authority to entertain a subsequent petition for review of such order.

3. STATUTES—*Gas Conservation Act—Dual Subjects—Validity.* The 1959 amendment to the Gas Conservation Act being Chapter 237 of the Laws of 1959, now G. S. 1961 Supp., 55-703, does not contain dual subjects and the subject is sufficiently expressed in the title. It is not an unconstitutional delegation of legislative authority, and is not in violation of the due process and equal protection clauses of the federal and state constitutions.

Appeals from Finney district court, ROLAND H. TATE, judge. Opinion filed November 2, 1963. Reversed with directions. (Consolidated cases.)

Appeals from Stevens district court, L. L. MORGAN, judge. Opinion filed November 2, 1963. Affirmed. (No. 42,038.)

Malcolm Miller, of Wichita, argued the cause, and *L. M. Poe*, of Colorado Springs, Colorado, *Carl T. Smith* and *Stuart R. Carter*, both of Wichita, were with him on the briefs for appellant, Colorado Interstate Gas Company.

Mark Adams, of Wichita, argued the cause, and *Conrad C. Mount*, *John T. Grant*, *George E. Peabody* and *Charles V. Wheeler*, all of Oklahoma City, Oklahoma, *D. B. Lang*, of Scott City, *Lawrence I. Shaw*, *F. Vinson Roach* and *Patrick J. McCarthy*, all of Omaha, Nebraska, *Ray H. Calhan*, *Logan N. Green*, *Daniel R. Hopkins*, and *Ray H. Calihan, Jr.*, all of Garden City, *Charles E. Jones*, *William I. Robinson*, *J. Ashford Mantz*, *Clifford L. Malone*, *Mark H. Adams, II*, *John S. Seeber*, *Floyd E. Jensen* and *Joe Rolston*, all of Wichita, were with him on the briefs for the appellants, Northern Natural Gas Company, a Corporation and Cities Service Gas Company, a Corporation.

Douglas Gleason, of Ottawa, argued the cause, and *James D. Conway* and *Elmer J. Jackson*, both of Hastings, Nebraska, *Thomas E. Gleason* and *Jules V. Doty*, both of Ottawa, and *Hollis B. Logan*, of Topeka, were with him on the briefs for the appellant, Kansas-Nebraska Natural Gas Company, Inc.

Richard C. Byrd, of Ottawa, argued the cause, and *J. Robert Wilson*, *John D. Townsend*, *Robert C. Londerholm*, *Charles R. Escola*, *Charles C. McCarter*, *Rex A. Jemison*, *Carl L. Wettig*, and *Glenn D. Young*, all of Topeka, were with him on the briefs for the appellee, The State Corporation Commission of the State of Kansas.

Robert T. Cornwell, of Wichita, argued the cause, and *David W. Buxton*, *Wayne E. Coulson*, *Paul R. Kitch*, *Dale M. Stucky*, *Donald R. Newkirk*, *Gerrit H. Wormhoudt*, *Philip Kassebaum*, *John E. Rees*, *Robert J. Hill*, *Willard B. Thompson*, *Hugo T. Wedell*, and *Homer V. Gooing*, all of Wichita, *A. E. Kramer* and *Bernard E. Nordling*, both of Hugoton, were with him on the briefs for the appellee, Southwest Kansas Royalty Owners' Association.

Chas Vance, of Liberal, argued the cause, and *C. C. Linley*, of Liberal, *Wendell J. Doggett* and *C. A. Conoley*, both of Kansas City, Missouri, and *Jeff A. Robertson*, of Topeka, were with him on the briefs for the appellee, Panhandle Eastern Pipe Line Company.

The opinion of the court was delivered by

HATCHER, C.: These appeals are from judgments rendered on petitions to review the orders of the State Corporation Commission determining the market demand for natural gas in the Kansas-Hugoton Gas Field for the six-months period beginning October 1, 1959, and extending through March 31, 1960, and also the monthly allowable for each month of such period.

The orders were litigated in two forums. The district court of Stevens County, Kansas, entertained separate petitions to review filed by Panhandle Eastern Pipeline Company (Panhandle) and Southwest Kansas Royalty Owners' Association (Royalty Owners'). They challenged the orders, contending that the determination of market demand and allowable production was unreasonably low. The district court of Finney County, Kansas, entertained separate petitions to review filed by Northern Natural Gas Company (Northern Natural), Cities Service Gas Company (Cities Service), Colorado Interstate Gas Company (Colorado Interstate), and Kansas-Nebraska Natural Gas Company (Kansas-Nebraska). They challenge the orders contending, among other things, that the determination of market demand and allowable production was unreasonably high. (The parties will hereinafter be identified as indicated in the parentheses.)

The separate petitions for review filed in the Finney County District Court were consolidated for hearing. The separate petitions for review filed in the Stevens County District Court were also consolidated. All the appeals involve the same orders and the same record. They will be considered in a single opinion.

The questions presented by these appeals were determined in *Colorado Interstate Gas Co. v. State Corporation Comm.*, (41,515) 192 Kan. ....., ... P.2d ....., insofar as they challenge the Commission's orders for the reason that they are not supported by a substantial competent evidence; they violate the provisions of the Gas Conservation Act or the Commission's basic order; they constitute an interference with interstate commerce; they invade the province of the Federal Power Commission under the Natural Gas Act, or they violate the due process clause of the United States Constitution or impair the obligation

of contracts. Undue repetition will be avoided if we incorporate that opinion here by reference as determinative of the issues mentioned. We do so.

There remains for determination the jurisdictional dispute between the two district courts, and the constitutionality and effect of G. S. 1961 Supp., 55-703, which amended G. S. 1949, 55-703.

On December 15, 1959, following the overruling of petitions for rehearing, Royalty Owners' filed petitions for judicial review of the market demand order and the October allowable order in the district court of Stevens County, Kansas. On December 16, 1959, Panhandle filed similar petitions for review in the same court. Subsequent thereto, Northern Natural, Cities Service, Colorado Interstate, and Kansas-Nebraska filed petitions for judicial review, respectively, of each of said orders in the district court of Finney County, Kansas. Thereafter, all six parties filed their several petitions for judicial review of each of the other monthly allowable orders, covering the period involved, in their chosen jurisdiction.

It would serve no useful purpose to review the various motions filed by the parties in an effort to bring all parties before the court of their preferred jurisdiction, or the orders in connection therewith.

It should be noted that the district court of Stevens County, subsequent to the hearing on the merits, ruled that the Commission's order is not subject to piecemeal review from case to case and court to court.

The district court of Finney County, subsequent to the hearing on the merits, ruled that each party was entitled to maintain a separate proceeding for review and that the only parties to the proceedings were those named in the captions of the petitions for review.

The district court of Stevens County held a hearing on February 13, 1960, at which Northern Natural, Cities Service, and Colorado Interstate did not appear; although they received notice. On March 10, 1960, the court entered its judgment in which it found:

> "That the Report and Order dated November 10, 1959, and subsequent allowable orders of the State Corporation Commission are based on substantial competent evidence and are lawful and valid. Said report and order makes reasonable provisions for an orderly process correcting inequities (existing for more than ten years and which have progressively increased) discriminating in favor of the correlative rights of producers and royalty owners in the Oklahoma Hugoton Gas Field and against those in the Kansas Hugoton Gas Field; as provided by the Statutes of Kansas, Section 55-703, 1959 supplement."

The judgment of the district court of Stevens County affirmed the orders in controversy.

The district court of Finney County held a hearing on February 23, 1960. Panhandle and Royalty Owners' were not permitted to participate because they had not filed petitions for review in that court. On May 26, 1960, the court entered its judgment holding valid the market demand order for the six-months period beginning October 1, 1959, extending through March 31, 1960. It further ordered that:

> ". . . the several monthly proration orders entered by the State Corporation Commission for October, 1959, monthly, through March, 1960, should be, and the same are hereby, reversed and set aside insofar as the net allowables there set forth are greater by virtue of underages, either canceled or carried forward as a result of the Commission's departing from its former method of determining allowables beginning May, 1956, to October 1, 1959; and such monthly proration

> orders entered by the State Corporation Commission for the months of October, 1959, through March, 1960, are affirmed insofar as such orders disclose market demand and current allowables without adjustment to runs as determined by the Commission and net allowable determined by adding underage or subtracting overage from current allowable, so long as such underage or overage accrued since October 1, 1959; . . ."

It would serve no useful purpose to take time and space to align the parties as they appear before this court with their numerous appeals and cross-appeals. We will proceed to determine the jurisdictional questions presented.

Before an action may be brought by any party to a proceeding resulting in an order by the Commission, a petition for rehearing must first be filed with the Commission under the provisions of G.S. 1949, 55-606. The statute provides further:

> ". . . Such action may be brought by any person aggrieved, whether or not such person was the applicant for rehearing, within thirty days after the denial of the petition for rehearing, or, if rehearing is granted, then within thirty days after the final decision by the commission. . . ."

Once the petition for rehearing is concluded, any person aggrieved, whether or not such person filed a petition for rehearing, may file a petition for judicial review. One application for rehearing will suffice for all. The statute does not anticipate that the Commission need be troubled by petitions for rehearing on the part of all the parties or persons that may be interested in an investigation or hearing, or aggrieved by the order resulting therefrom.

The statute contemplates but one action or petition for review of an order of the Commission. It does not anticipate separate actions by separate parties in different

courts where a single order is involved. Once a petition for review is filed in a Court of competent jurisdiction, all interested parties may intervene and protect their rights.

The parties interested in the hearing out of which the orders in this controversy grew are numerous and varied. Many are aggrieved. The reviewing court is not concerned with individual grievances of numerous parties or with resolving disputes between parties. Its sole responsibility is to review and determine the validity of the Commission's order.

The district court of Finney County was of the opinion that each party aggrieved by an order of the Commission was entitled to maintain a separate petition to review an order of the Commission and that such separate actions could be brought in any county of proper venue. The statute does not so provide. That part of G.S. 1949, 55-606 material to this question states:

> "Any action for judicial review of any . . . order or . . . may be brought . . . in the district court of any county in the state wherein the property affected thereby is located, or, if the property affected thereby is located in different counties, then the jurisdiction shall lie in either of such counties. . . ."

If the property affected by the order is located in different counties, the jurisdiction to review the order will lie in either, not both. In *Kansas-Nebraska Natural Gas Co. v. State Corporation Commission*, 176 Kan. 561, 271 P.2d 1091, it was held in paragraph 2 of the syllabus:

> "The primary purpose and intent of creating a court of judicial review, as a part of the oil and gas conservation act, in which actions may be brought to review any rule, regulation, order or decision of the state corporation commission was: (*a*) To require in-

terested parties to present their evidence and contentions to such commission; and (b) to eliminate the uncertainty and confusion which could, and probably would, result from the filing of numerous independent actions by the various parties affected by an act, or acts, of the commission, when in such independent actions the court would be deprived of the benefit of the complete record on which the action of the commission was based.

The law is well settled that where there is concurrent jurisdiction in more than one court the court which first acquires jurisdiction retains it to the exclusion of another court which is requested or seeks to assume it. (*Hoard* v. *The Home State Bank*, 176 Kan. 624, 272 P.2d 1054; *Shields* v. *Fink, Executrix*, 190 Kan. 17, 372 P.2d 252; *Walker* v. *McNutt*, 165 Kan. 533, 196 P.2d 163; *Charvat* v. *Moore*, 167 Kan. 336, 205 P.2d 980.) The court first acquiring jurisdiction may draw to itself all the issues and enjoin parties from litigating them elsewhere. (*Graves* v. *National Mutual Cas. Co.*, 164 Kan. 267, 188 P.2d 945.)

The district court of Stevens County first acquired jurisdiction to review the market demand order for the period beginning October 1, 1959, and extending through March 31, 1960, and the October and November, 1959, allowable orders. The district court of Stevens County could have drawn all the issues to it and enjoined the parties from proceeding in another court of concurrent jurisdiction.

The district court of Finney County was without jurisdiction to review the orders.

The 1959 amendment to the Gas Conservation Act being Chapter 237 of the Laws of 1959, now G.S. 1961 Supp., 55-703, is challenged on numerous constitutional grounds. It is first contended that the act is in violation of section 16, article 2, of the Constitution of the State of Kansas, which

reads: "No bill shall contain more than one subject, which shall be clearly expressed in its title. . . ."

The title to the act reads: "An act relating to the production and conservation of natural gas; amending section 55-703 of the General Statutes of 1949, and repealing said original section."

The amendment which is subject to the challenge here is found in the last proviso of the act which reads:

> ". . . *Provided further, however,* That the provisions of this act shall not apply to any common source of supply in which the average open flow of all the producing wells therein is not in excess of seven hundred fifty thousand (750,000) cubic feet per day. *The commission in determining the market demand for gas from a common source of supply shall consider the reasonable current requirements for current consumption and use within and without the state, and such other factors, conditions, or circumstances that would aid in establishing the market demand.*" (The italics identify the amendment which was added.)

The title to the act is broad enough to cover any provision relating to the production and conservation of natural gas. Insofar as the determination of market demand is material to the conservation of natural gas, it is included in a title relating to the production and conservation of natural gas.

A title is sufficient if it indicates clearly, though in general terms, the scope of the act. The more general the language of the title the broader the subject matter of the act may be. It is not necessary that the title be an index, a synopsis, or an abstract of the entire act in all its details. The purpose of the title is to inform the legislature and the general public of the subject under consideration.

The contention that the act deals with unrelated subjects cannot be sustained. The determination of market demand is pertinent to the regulation of production and conservation of gas. In determining the market demand for gas from a common source of supply, the consideration of factors, conditions, or circumstances that would aid in establishing the market demand are germane to regulating production and conservation of gas.

Those who are interested in pursuing further the construction, purpose, and effect of section 16, article 2, of the Constitution of the State of Kansas should see *In re Sanders, Petitioner*, 53 Kan. 191, 36 Pac. 348; *Rathbone* v. *Hopper*, 57 Kan. 240, 45 Pac. 610; *State, ex rel.*, v. *McCombs*, 129 Kan. 834, 284 Pac. 618; *City of Lawrence* v. *Robb*, 175 Kan. 495, 265 P.2d 317; *State, ex rel.*, v. *Kansas Turnpike Authority*, 176 Kan. 683, 273 P.2d 198; *State, ex rel.*, v. *Urban Renewal Agency of Kansas City*, 179 Kan. 435, 296 P.2d 656; *State, ex rel.*, v. *City of Wichita*, 184 Kan. 197, 335 P.2d 786; and *Water District No. 1* v. *Robb*, 182 Kan. 2, 318 P.2d 387.

It is contended that the act constitutes an unlawful delegation of legislative authority.

The 1959 amendment (G.S. 1961 Supp., 55-703) did not delegate any additional authority to the Commission requiring new standards to guide it. Rather it designated standards which were appropriate for the Commission to use in exercising the authority previously granted. (G.S. 1949, 55-703.)

If the Commission was to determine market demand six months in advance, certainly it was necessary for it to consider the market demand without the state, as very little of the gas was sold within the state. The Commission was also obligated to consider "such other factors, conditions

or circumstances" as would aid it in properly determining the market demand.

The determination of market demand under the provisions of G.S., 1961 Supp. 55-703, is chiefly for the purpose of determining when the Commission shall take jurisdiction of a gas field. The Commission shall exercise jurisdiction "whenever the available production of natural gas from any common source of supply is in excess of the market demands" and other conditions exist. In *Water District No. 1* v. *Robb*, 182 Kan. 2, 318 P.2d 387, it was held:

> "While the legislature cannot delegate its constitutional power to make a law (Article 2, Section 1, Kansas Constitution), it can make a law which delegates the power to determine some fact or state of things upon which such law shall become operative." (Syl. 6)

In *State, ex rel.*, v. *Fadely*, 180 Kan. 652, 308 P.2d 537, it was held:

> "The legislature may not delegate its power to make laws but may enact a law in general terms which confers upon an officer or board administrative duties to enforce and apply the law, and, to accomplish that end, to ascertain the existence or non-existence of some future fact, event or condition which the officer or board is required to ascertain; but, the statute must prescribe reasonably clear standards by which those vested with the duty to make the statute operate will do so in the manner intended. Where, however, the discretion to be exercised relates to a police regulation for the protection of the public morals, health, safety or general welfare, and it is impossible or impracticable to provide such standards and to do so would defeat the legislative object sought to be accomplished, legislation conferring such discretion may be valid and constitutional without such restrictions and limitations." (Syl. 7)

In *The State* v. *Railway Co.*, 76 Kan. 467, 92 Pac. 606, affirmed *Mo. Pac. Ry. Co.* v. *Kansas*, 216 U.S. 262, 54 L. Ed. 472, 30 S. Ct. 330, the court had under consideration the constitutionality of the Article 8, Chapter 84 of the General Statutes of 1901, creating a Board of Railroad Commissioners, now the State Corporation Commission. The statute placed upon the board the responsibility of determining a "reasonable charge for services rendered" by railroads. (G.S. 1901, Sec. 5981.) The term "reasonable charge" was not defined, nor were there any standards by which reasonable charges were to be determined. The court, in considering the general constitutionality of the act, held:

> "The act does not delegate to the board of railroad commissioners legislative powers. The legislature in the exercise of its power to regulate and control public corporations, such as common carriers, may delegate to a board of railroad commissioners certain functions administrative in character which cannot well be performed by the legislature itself." (Syl 2)

G.S., 1961 Supp., 55-703, does not contain any unlawful delegation of legislative authority.

G.S., 1961 Supp., 55-703, does not violate the due process and equal protection clauses of the federal and state constitutions.

We stated in *Colorado Interstate Gas Co.* v. *State Corporation Comm.*, (41,515), 192 Kan. ___, ___ P.2d ___, that the Commission was obligated to consider evidence of all factors which were pertinent to the determination of market demand under the provisions of G.S. 1949, 55-703. This necessarily included all factors mentioned in the last proviso of G.S., 1961 Supp., 55-703. The Commission's abandonment of the practice of deducting past monthly underages from current allowables was also approved. The constitu-

tional objections raised in connection with the two matters were fully considered and determined. It would serve no useful purpose to repeat here what was said in that case.

The question is presented, if the Commission was permitted or obligated under the provisions of G.S. 1949, 55-703, to consider the factors mentioned in the last proviso of G.S. 1961 Supp., 55-703, in determining market demand, why the amendment? An examination of the record and the contentions made in the briefs clarify the matter.

The Commission for many years had considered only the nominations of the pipeline companies in determining market demand. It finally became apparent to the Commission that its method of determining market demand and calculating allowables had no relation to the actual market demand in the field, and that the field was being detrimentally affected by its restrictive determinations and calculations. When the Commission attempted to make corrections by considering all material factors, its orders were set aside by a district court.

The legislature desired to make it crystal clear to both the Commission and the courts, that the Commission was to consider all pertinent factors in making its calculations and determinations.

The judgment of the district court of Finney County is reversed with instructions to dismiss the petitions for review of the orders described herein.

The judgment of the district court of Stevens County is affirmed.

APPROVED BY THE COURT.

APPENDIX "G"

THE SUPREME COURT OF KANSAS

TOPEKA

January 3, 1964

TO ALL ATTORNEYS OF RECORD RE: CASES No. 41,515—41,516—41,555—41,556—42,038—42,175—42,176—42,185—and 42,230.

Gentlemen:

All motions for rehearing filed in the above numbered cases are this date Denied.

Yours truly,

/s/ James R. James
James R. James
Clerk

APPENDIX "H"

IN THE DISTRICT COURT OF FINNEY COUNTY, KANSAS

Colorado Interstate Gas Company, Northern Natural Gas Company, Cities Service Gas Company and Kansas-Nebraska Natural Gas Company, Petitioners, vs. The State Corporation Commission of the State of Kansas, Respondent.	Case No. 10,744 (Consolidated)

JOURNAL ENTRY OF JUDGMENT

The above captioned matter, consisting of consolidated cases filed by Colorado Interstate Gas Company, Nos. 10,744, 10,745, 10,755, 10,773, 10,783, 10,796 and 10,805; Northern Natural Gas Company, Nos. 10,746, 10,747, 10,754, 10,774, 10,784, 10,795 and 10,806; Cities Service Gas Company, Nos. 10,748, 10,749, 10,752, 10,790, 10,794, 10,801 and 10,813; and Kansas-Nebraska Natural Gas Company Nos. 10,765, 10,766, 10,767, 10,787, 10,800, 10,804 and 10,814; came on for hearing before The Honorable Roland H. Tate, Judge of the District Court of Finney County, Kansas, on the petitions for judicial review filed by the respective parties as hereinbefore indicated, on the 24th day of February, 1960.

Colorado Interstate Gas Company appears by Malcolm Miller and Stuart R. Carter, of Wichita, Kansas, and Daniel R. Hopkins and Ray M. Calihan, of Garden City, Kansas.

Northern Natural Gas Company appears by Mark H. Adams and Mark H. Adams, II, of Wichita, Kansas, and Daniel R. Hopkins and Ray N. Calihan of Garden City, Kansas, and Jack C. Osborne of Omaha, Nebraska. The State Corporation Commission appears by J. Robert Wilson, General Counsel, and S. F. Fleeker and John Townsend, Assistant General Counsel. Panhandle Eastern Pipe Line Company appears specially for the purpose of objecting to the jurisdiction of the Court by Charles Vance and C. C. Linley of Liberal, Kansas, and the Southwest Kansas Royalty Owners Association appears specially for the purpose of objecting to the jurisdiction of the Court by Dale M. Stucky, Page T. Wadell and Robert T. Cornwell, of Wichita, Kansas. Kansas-Nebraska Natural Gas Company appears by Douglas Gleason of Ottawa, Kansas, and James D. Conway and Elmer J. Jackson, of Hastings, Nebraska. Cities Service Gas Company appears by Joe Ralston, Oklahoma City, Oklahoma, and Lang & Wallace of Scott City, Kansas.

Thereafter it is stipulated that all of the cases hereinbefore mentioned may be heard at this time on a common record and consolidated under No. 10,744 in this court.

Colorado Interstate Gas Company objects to the special appearance of Panhandle Eastern Pipe Line Company and Southwest Kansas Royalty Owners Association, and Northern Natural Gas Company joined in the objection, and such objections were taken under advisement by the Court.

Thereafter Panhandle Eastern Pipe Line Company offered evidence in support of its objection to the jurisdiction, and the objection to the jurisdiction of Panhandle Eastern Pipe Line Company and the motion of the Southwest Kansas Royalty Owners Association to dismiss were overruled by the Court.

Thereafter the State Corporation Commission presented a motion for change of venue and a motion to dismiss, which were overruled by the Court.

Thereafter the motion of Panhandle Eastern Pipe Line Company for a stay was overruled by the Court.

Thereafter the motion of Panhandle Eastern Pipe Line Company for special findings of fact and conclusions of law was argued and overruled by the Court.

Thereafter the Court overruled Southwest Kansas Royalty Owners Association's motion for a stay pending hearing of its appeal from the Court's order overruling its motion to dismiss.

Thereafter the Court ruled that the only parties to the motion were those named in the caption of the various actions consolidated herein and that Panhandle Eastern Pipe Line Company and the Southwest Kansas Royalty Owners Association were not parties to the action. The Southwest Kansas Royalty Owners Association and Panhandle Eastern Pipe Line Company did not thereafter participate in trial of the actions.

Thereupon, the Court heard the arguments presented by counsel for Colorado Interstate Gas Company, Northern Natural Gas Company and the State Corporation Commission and received at such times and thereafter, at times set by the Court, briefs and reply briefs submitted by the respective parties.

Thereafter, and on the 26th day of May, 1960, the Court, being duly advised in the premises, and after considering the briefs, arguments and records, filed herein,

ADJUDGES, DECREES AND DETERMINES:

That the report and order of the State Corporation Commission dated November 10, 1959, for the six months'

proration period beginning October 1, 1959, and running through March 31, 1960, for the Kansas Hugoton Gas Field, is a proper, lawful and valid order and such order should be, and the same is hereby, affirmed.

THE COURT FURTHER DECREES, ADJUDGES AND ORDERS that the several monthly proration orders entered by the State Corporation Commission for October, 1959, monthly, through March, 1960, should be, and the same are hereby, reversed and set aside insofar as the net allowables there set forth are greater by virtue of underages, either canceled or carried forward as a result of the Commission's departing from its former method of determining allowables beginning May, 1956, to October 1, 1959; and such monthly proration orders entered by the State Corporation Commission for the months of October, 1959, through March, 1960, are affirmed insofar as such orders disclose market demand and current allowables without adjustments to runs as determined by the Commission and net allowable determined by adding underage or subtracting overage from current allowable, so long as such underage or overage accrued since October 1, 1959; such reversal being in accordance with the previous judgments of this court, and particularly the judgment entered December 15, 1958, but not to extend such judgment past the Commission's determination under the amendment to the Gas Conservation Statute (G. S. 1959 Supp., 55-703) and the proceedings hereunder begun by the Commission effective October 1, 1959.

Thereafter and on the 26th day of May, 1960, the motions for a new trial filed by Colorado Interstate Gas Company, Northern Natural Gas Company, Panhandle Eastern Pipe Line Company, Kansas-Nebraska Natural Gas Company, Cities Service Gas Company and the State Corporation Commission came on for hearing, and the Court, being

duly advised in the premises and after considering the arguments of counsel, denies all such motions for a new trial.

Thereafter and on the oral motions of the parties to this litigation the Court finds that its judgment should be stayed pending appeals which various parties announce they contemplate and will promptly file.

The Court further decrees, adjudges and orders that the costs herein be taxed equally to Colorado Interstate Gas Company, Northern Natural Gas Company, Cities Service Gas Company, Kansas-Nebraska Natural Gas Company and the State Corporation Commission of the State of Kansas.

APPENDIX "I-1"

Market Demand Order

(For Period October 1, 1959, to March 1, 1960).

Dated November 10, 1959.

Issued December 3, 1959.

BEFORE THE STATE CORPORATION COMMISSION OF THE STATE OF KANSAS.

In the matter of determining the market demand for natural gas for the Hugoton Gas Field of Kearny, Finney, Grant, Haskell, Morton, Stevens, Seward, Stanton and Hamilton Counties, Kansas, the deliverability and acreage attributable to each of the respective wells therein, and fixing gas production percentages and quotas for wells within said field for the proration period extending from October 1, 1959, to March 31, 1960, both inclusive.	Docket No. 61,366-C (C-7378) Conservation Division.

REPORT AND ORDER OF THE COMMISSION:

BY THE COMMISSION:

1. This proceeding is to determine the market demand for natural gas in the Kansas Hugoton Gas Field for the proration period of October 1, 1959, to March 31, 1960. Public hearings were duly held on September 25 and 30 and October 1 and 2, 1959, at Wichita, Kansas, at which appearances were entered on behalf of Colorado Interstate Gas Company, Cities Service Gas Company, Northern Nat-

ural Gas Company, Republic Natural Gas Company, Kansas-Colorado Utilities, Inc., Pan-American Petroleum Corporation, Southwest Kansas Royalty Owners Association, Panhandle Eastern Pipe Line Company, Kansas-Nebraska Natural Gas Company, Hugoton Production Company, and the Commission staff. Prior to said hearings the Commission requested that all purchasers of gas from the Hugoton Field submit nominations and furnish certain specified information to the Commission before the date set for the hearing. At the hearings on September 25 and 30 and October 1 and 2, 1959, the information so furnished, together with other evidence, was introduced into the record of this proceeding.

EVIDENCE AND FINDINGS OF FACT.

2. The Commission finds that no single formula can be used to ascertain the market demand for natural gas from the Kansas Hugoton Gas Field or any particular field, as the factors and conditions vary from period to period and from gas field to gas field. In fixing the market demand for the gas from a particular field for a fixed period of time, the Commission should consider all the evidence and recommendations. It would be unwise for the Commission to consider only the nominations submitted by the purchasing companies or the actual takes of gas from a particular field when other evidence submitted indicates that determination of market demand on that basis alone would result in ultimate loss or waste of gas by the premature abandonment of wells or discrimination against a particular gas field by the purchasing companies. Nominations and runs are often controlled or influenced by contracts between the producers and purchasers. These contracts do not necessarily bear any relationship to the market demand for gas from the Kansas Hugoton Gas Field or any gas field, and they are not binding upon the Commission in carrying out its regulatory duties.

3. The nominations of the companies (estimates of their demands) from the Kansas Hugoton Gas Field for said six months' period are 277,801,541 M.c.f. at 14.65 p.s.i.a.

4. The information presented by the companies at the Commission's request shows for the year 1959 that Cities Service Gas Company, Northern Natural Gas Company, Panhandle Eastern Pipe Line Company, Colorado Interstate Gas Company, and Kansas-Nebraska Natural Gas Company expect to purchase gas from the Kansas Hugoton Field at a lesser rate, based on comparative gas reserves, than from their total reserves and that during the year 1959 Northern Natural Gas Company, Panhandle Eastern Pipe Line Company, and Kansas-Nebraska Natural Gas Company expect to take gas from the Oklahoma Hugoton Field (Guymon-Hugoton) at a greater rate, based on comparative gas reserves, than from the Kansas Hugoton Field. The information also shows that the total markets of the purchasing pipeline companies have increased considerably over the past few years. We find that Kansas Hugoton has not received its fair share of these additional markets.

5. The testimony of Mr. Clifford R. Horn, witness for Panhandle Eastern Pipe Line Company, shows that if the five largest purchasers (purchasing pipeline companies) were to take gas from the Kansas Hugoton Field at the same rate, based on comparative gas reserves, as they do from all sources to which they are connected, the Kansas Hugoton Gas Field's fair share of the markets would be 653,738,000 M.c.f. for a 12 month period. Analysis of actual runs over a 36 month period shows that 63.03 per cent of the yearly runs are taken in the six months from October to March. Based on this, the market demand for the current period should be 412,051,000 M.c.f. This was the figure recommended by Mr. Horn.

6. Evidence was presented by Republic Natural Gas Company showing that the wells in the Kansas Hugoton Gas Field were capable of sustained production for many years at a rate considerably higher than the present rate of production. Testimony to this effect was given by Mr. William C. Goodson based on a study of actual runs of 146 wells running continuously for a two to four month period. Mr. William Hurst made a theoretical study applying known principles of physics and petroleum reservoir engineering to observed data. The testimony of Mr. Hurst substantiated the results obtained by Mr. Goodson. Both witnesses qualified as expert petroleum engineers and neither was contradicted.

7. Mr. Goodson also testified that the Kansas Hugoton Field has reserves of approximately 22 trillion cubic feet (22,000,000,000,000 M.c.f.). He recommended that the market demand be set at 800,000,000 M.c.f. per year, with 500,000,000 M.c.f. being allocated to the current six month period. This figure was based on a production rate compared to reserves in the Kansas Hugoton Field of four of the five major pipelines compared to the production rate from their total system reserves.

8. Dr. Charles F. Weinaug, witness for the Southwest Kansas Royalty Owners Association, testified that the Kansas portion of the Hugoton Field is being produced at about half the rate that the Oklahoma portion is being produced. He also gave testimony indicating that unless the Kansas Hugoton Field were depleted at a much faster rate, an excessive number of wells will have to be redrilled due to corrosion of well casings.

9. There was no conflict in the evidence relating to drainage of gas from the Kansas Hugoton Field to the Oklahoma portion. Dr. Weinaug, who qualified as an expert witness in petroleum engineering, brought prior

studies up to date and testified that between 2,000,000 M.c.f. and 8,000,000 M.c.f. of gas was draining from Kansas into Oklahoma per year. This testimony was substantiated in principle by the testimony of Mr. Hurst, a witness for Republic Natural Gas Company, and was directly substantiated by the testimony of Mr. F. M. Buxton, witness for Kansas-Nebraska Natural Gas Company. The Commission finds that the pressure differential between the wells in the Kansas portion of the Hugoton Field and the Oklahoma portion of the Hugoton Field is increasing, and that drainage is occurring from Kansas into Oklahoma.

10. Assuming the rate of production in Oklahoma to remain the same for the next six months, Dr. Weinaug testified that in order to prevent further drainage, the Kansas portion of the Hugoton Gas Field would have to produce 725,000,000 M.c.f. during the six month period. This would equalize the pressure on both sides of the Kansas-Oklahoma state line, and thus prevent further drainage into Oklahoma.

11. It is obvious that the prevention of drainage into Oklahoma, the prevention of unnecessary redrilling of wells because of casing corrosion, and a fair share of the total system markets of the pipeline companies are goals to be sought after. It is just as obvious that these goals cannot be achieved in a short time without causing drastic effects in the industry. Therefore the Commission cannot effectuate the recommendations of Dr. Weinaug, and cannot adopt the recommendations of Mr. Horn and Mr. Goodson as to market demand. The Commission notes that past practices have succeeded in getting increased nominations and runs from the Kansas Hugoton Field. The nominations for the current period are 25,000,000 M.c.f. higher than for corresponding periods in recent years, and testimony of witnesses for the pipeline companies indicates that further increases in nominations and runs will occur in the future.

12. The Commission after considering all the evidence presented at the aforesaid hearings and the reasonable current requirements for current consumption and use within and without the state determines the market demand for gas from the Kansas Hugoton Field for the six months' period from October 1, 1959, to March 31, 1960, to be 281,000,000 M.c.f. at 14.65 p.s.i.a. The market demand for each month during this period is found to be:

October	1959	30,291,800	M.c.f.	@	14.65	p.s.i.a.
November	1959	45,100,500	"	"	"	"
December	1959	53,193,300	"	"	"	"
January	1960	54,710,700	"	"	"	"
February	1960	48,725,400	"	"	"	"
March	1960	48,978,300	"	"	"	"

13. In determining the market demand the Commission has considered the needs of each purchasing company for gas from Kansas Hugoton. Under this market demand figure Hugoton Production Company, Colorado Interstate Gas Company, Kansas-Nebraska Natural Gas Company, Panhandle Eastern Pipe Line Company, Kansas-Colorado Utilities, Inc., Quinque Oil and Gas Producing Company, and Shallow Water Refining Company will all receive allowables less than their nominations. Only two companies, Cities Service Gas Company and Northern Natural Gas Company will receive allowables in excess of their nominations.

It Is, Therefore, by the Commission Ordered: That the market demand for the six months' period from October 1, 1959 to March 31, 1960, inclusive, be as set out in Finding No. 12 of this order.

By the Commission It Is So Ordered:

Wiles, Chm.; Beatty, Com.; Byrd, Com.

Raymond B. Harvey,
Secretary.

(Seal)

November 10, 1959.

APPENDIX "I-2"

Commission Gas Proration Order and Report for October, 1959.

All of the pertinent portions of this order and report are abstracted. The portion of such report which has not been abstracted is that which sets up separately to some 3900 wells their respective status, allowable, underproduction and overproduction.

October Allowable Order

Now on this 20th day of November, 1959, the above-entitled matter comes before the Commission for consideration and determination of a schedule of production allowable for wells in the Hugoton Gas Field for the month of October, 1959, and the Commission finds:

1. That after notice as provided by the statutes and rules and regulations, the above-entitled matter was heard by the Commission at Wichita, Kansas, on September 25 and 30, and October 1 and 2, 1959, evidence thereon taken and all parties afforded an opportunity to be heard.

2. That the Commission has heretofore determined the market demand for gas from the Kansas Hugoton Gas Field for the month of October, 1959, to be 30,291,800 M.c.f. at 14.65 pounds p.s.i.a.

3. That no evidence was produced at said hearing to show that waste would result or correlative rights would be violated if the wells in the Kansas Hugoton Gas Field were allowed to produce this market demand.

4. That production in excess of said market demand of 30,291,800 M.c.f. plus or minus net underages or over-

ages and cancelled underages would result in waste as that term is defined by the Statutes of the State of Kansas; that under the Basic Order No. 44-3-21 entered in Docket No. C-164, as amended, the current allowable for any given period consists of the reasonable market demand for that period plus the cancelled underage for the prior month of record, and that after giving effect to such cancelled underage as shown by the records of the Commission as of October 1, 1959, the current allowable for the month of October, 1959, should be fixed at 35,073,284 M.c.f.; that the net allowable for any given period consists of the current allowable for that period plus or minus the net underages or overages as the case may be, and that after giving effect to such underages or overages as shown by the records of the Commission as of October 1, 1959, the resulting net allowable for October, 1959, is 165,309,014 M.c.f.; that in order to prevent waste the production of natural gas from said common source of supply should be restricted or limited to said amount for said period.

5. That in order to protect the respective correlative rights of the producers and other interested parties having a right to withdraw gas from the common reservoir and in order to permit the wells and leases therein to currently produce proportionately so that each may ultimately produce approximately the amount of gas underlying it, production quotas for the several developed leases and wells should be established during said period in accordance with the Basic Order No. 44-3-21 entered in Docket No. C-164, as amended.

6. That the acreage attributable to and the individual well deliverability factors of the several wells in said field are in the amounts and figures as set out in the October, 1959, allowable report which is attached hereto, marked

Exhibit "A" and hereby referred to and made a part hereof by reference; that the allocation of the allowed production within and between the wells in said common source of supply and the individual well production quotas should be made and established in the manner and form prescribed in said Basic Order No. 44-3-21, entered in Docket No. C-164, as amended, and when so made and established are in the amounts and figures as set out in said schedule Exhibit "A".

7. That such allowable should constitute the maximum permissible production from such wells and leases for the period covered by this order.

It Is, Therefore, by the Commission Ordered: That the current allowable for natural gas from the Hugoton Gas Field located in Kearney, Finney, Grant, Haskell, Morton, Stevens, Seward, Stanton and Hamilton Counties, Kansas, for the month of October, 1959, be and it is hereby established at 35,073,284 M.c.f. The resulting total net allowed production of natural gas from said field for said month of October, 1959, is 165,309,014 M.c.f. and the same is hereby allocated among the several developed leases and wells, in said field in the manner prescribed by said Basic Order No. 44-3-21 entered in Docket No. C-164, as amended, and when so distributed, each well's production quota is in the amount set out in the schedule, Exhibit "A" attached hereto; that production of natural gas from said common source of supply and from each of the developed wells and leases therein shall be limited during the period covered hereby to the respective allowables established for the said field and each of the wells therein.

It Is Further Ordered: That the acreage and deliverability factors and current position of the wells as set out in schedule "A", attached to this order, be, and the same are hereby adopted and established.

The Commission retains jurisdiction of the subject matter and the parties for the purpose of entering such further order or orders as from time to time it may deem proper.

By the Commission It Is So Ordered.

Wiles, Chm.; Beatty, Com.; Byrd, Com.

Raymond B. Harvey,
Secretary

(Seal)

JRG:fr

EXPLANATION

HUGOTON FIELD—OCTOBER, 1959.

The allowables shown on Exhibit "A" are computed in accordance with Order No. 44-3-21, the Basic Order for the Hugoton Field. The October current allowable for each well is determined by multiplying the product of its deliverability and acreage factor by $7.24184058 \left(\frac{35,073,284}{4,843,145}\right)$ the relationship of the total current allowable to the total deliverability adjusted for acreage.

The letter (-S) following net allowable indicates wells over-produced and to be shut in until reduced in accordance with Basic Order Provisions.

September net allowable	161,892,223 M.c.f.
September runs	27,561,706 M.c.f.
Underage	134,330,517 M.c.f.
October market demand	30,291,800 M.c.f.
Plus August cancelled underage	4,781,484 M.c.f.
October current allowable	35,073,284 M.c.f.
Plus net underage allowed	130,235,730 M.c.f.
October net allowable	165,309,014 M.c.f.

Total adjusted deliverability is 4,843,145

Deliverability standard pressure is 261.9 pounds.

APPENDIX "J"

PETITION OF NORTHERN NATURAL GAS COMPANY FOR JUDICIAL REVIEW OF COMMISSION'S "REPORT AND ORDER" EFFECTIVE FEBRUARY 1, 1958.

Comes Now Plaintiff Northern Natural Gas Company and for its cause of action herein against the above named defendants, alleges and states to the Court:

1. Plaintiff is now and has been during all times material herein a Delaware corporation, duly authorized to transact and carry on business in the State of Kansas, as a foreign corporation, with its principal office and place of business at 2223 Dodge Street, Omaha, Nebraska, and operating offices at Hugoton, Kansas.

2. Plaintiff is now and has been during all times material herein a natural gas company as defined in the Natural Gas Act as amended (15 USCA 717, *et seq.*) and engages generally in the business of purchasing natural gas for transportation and sale in interstate commerce for resale under the provisions of said Act by means of an integrated pipe line system and facilities extending from Texas into and through Oklahoma and Kansas and into Nebraska, Iowa, Minnesota and South Dakota. In operating said interstate integrated pipe line system, and as an integral part thereof, plaintiff has, among other things, entered into contracts with certain producers in the Kansas Hugoton Gas Field, which contracts are presently subsisting and have been subsisting during all times material herein, for the purchase of natural gas produced in and from said field. After such gas is purchased by plaintiff, it is transported and sold along with other

gas it purchases for resale, both in interstate and intrastate commerce in Kansas and other states.

3. That under and pursuant to G.S. 1949, Section 55-701, *et seq.*, the Commission has certain regulatory powers and duties incident to proration of gas production from said field; that since 1944, the inception of proration of gas in said field, until May, 1956, the method followed by the Commission in proration of gas production in said field was generally to allocate to each well in the field its portion of the total requirements for gas from the field as reflected by the nominations of the purchasers or takers as adjusted by adding the total current overages in production and deducting the total current underages in production; that under such method the actual runs of gas from the field were the determining factor in establishing the market demand and allowable production of gas from the field.

4. That heretofore and in the month of January, 1958, said defendants, purporting to act in their official capacity as the State Corporation Commission of the State of Kansas, hereinafter called "Commission" promulgated and issued said Commission's u dated Report and Order (hereinafter called Report and Order) to be effective February 1, 1958, purporting among other things (a) to set forth and determine the method, manner and means by and upon which said Commission would determine market demand for gas from said Kansas Hugoton Gas Field and fix well allowables in said Field, and (b) to affirm and declare to be final Interim Proration Orders for the months of May, 1956, to November, 1957, inclusive. That a true and correct copy of such Report and Orde is attached hereto marked Exhibit "A" and made a part hereof.

5. That during the pendency of the hearings as a result of which said Report and Order was issued and in May, June and July of 1956, the Commission issued Interim Orders which established a fictitious and arbitrarily devised market demand for gas from said field in excess of the actual requirements for gas therefrom and in excess of the actual market demand for gas therefrom. That beginning in August, 1956, and continuing through November, 1957, the Commission issued each month an "Interim Order" which purported to allocate allowable production to the wells in the field, but which Interim Orders failed to take into account and to adjust the current allowable assigned to the wells by the total net underproduction of the field, i. e., the amount of former allowables assigned which the field had failed to produce. That the result of the change from the established proration method brought about by the Commission's Interim Orders from May, 1956, through November, 1957, was to establish allowables for gas from the Kansas Hugoton Gas Field in excess of the actual market demand therefor, and that said field thereby incurred an underproduced status of about 50 billion cubic feet of gas during such period of time; that the resulting effect of such fictitious method of fixing market demand and determining current allowables has been and will be to permit disproportionate and unratable taking and production of gas as between developed gas producing leases in said Field to the detriment and injury of said plaintiff and correlative rights of the owners of the producing leases, the gas from which is dedicated on contract to be sold to plaintiff. That said Interim Orders were entered as the Commission's monthly gas proration Order and Report in its Dockets Nos. 51,342-C (C-4888), 53,042-C (C-5171), 54,220-C (C-5454) and 55,705-C (C-5792). That such Interim Orders when issued were not final and were inter-

locutory only, were not dispositive of the cause before the Commission and reserved material questions, issues and directions for future determination in the proceedings in which they were entered.

6. That further, said Report and Order purports to amend the Commission's former practices and procedures of proration of gas production in said field and, among other things, provides that the Commission in the determination of market demand for gas from said field will give effect to (a) the takes of gas from other sources of supply to which the purchasers are connected, including fields outside of the State of Kansas, (b) the total markets for natural gas of all the purchasers from said field, (c) the rate of increase of the markets of these purchasers compared to the rate of increase in takes from said field and (d) to takes from other sources of supply in Kansas in excess of the delegated authority and beyond the jurisdiction of said Commission, all without any guide or rule defining the extent or weight to be given each such factor, thereby denying to plaintiff due process of law; that the purpose of giving effect to such intangible factors by the Commission in said Report and Order is to form a basis for the fixing by it of a market demand for gas and assignment of allowables to the wells in said field in fictitious volumes in excess of and above the actual requirements for gas of the purchasers from the field. This in turn permits and encourages disproportionate and unratable taking of gas from developed leases in said field to the detriment and injury of the plaintiff and the correlative rights of the owners of producing leases, the gas from which is dedicated by contract to be sold to plaintiff.

7. After the issuance of said Report and Order and within the time and in the manner prescribed by G.S.

1949, 55-606, plaintiff duly filed its petition for rehearing with respect thereto. That a true and correct copy of plaintiff's petition for rehearing is attached hereto marked Exhibit "B" and made a part hereof. That thereafter and under date of February 12, 1958, said Commission denied said petition for rehearing.

8. Plaintiff further states that as a purchaser of gas produced in and from said Kansas Hugoton Gas Field, it is aggrieved by the promulgation and issuance of said Report and Order; that the property and property rights of plaintiff affected by said order is located, among other counties, in Finney County, Kansas, and jurisdiction for a judicial review of said Report and Order of said Commission is granted to this Court by G.S. 1949, Sections 55-707 and 55-606.

9. Plaintiff, in support of its petition for judicial review herein for each and all of the reasons hereinbefore set forth and as set forth in plaintiff's petition for rehearing, Exhibit "B" attached to and made a part hereof, contends that said Commission's Report and Order and the Interim Orders hereinbefore referred to, purported to be finalized by said Report and Order, are illegal, unlawful, unreasonable, arbitrary, unconstitutional and null and void, and said Commission has no jurisdiction or authority to promulgate and issue such Report and Order.

Wherefore, plaintiff prays:

(a) That the Court take jurisdiction of this action and judicially review the proceedings in which Commission's "Report and Order", effective February 1, 1958, and herein complained of, was issued, and the purported findings upon which the same is based, together with the evidence and testimony in the record, and enter a judgment setting aside such Report and Order and the find-

ings made therein and declare said Report and Order ineffective, unconstitutional and void.

(b) That the Court remand the proceedings to the Commission for a recalculation of the allowables heretofore granted by the Interim Orders for May, 1956, to November, 1957, inclusive, in accordance with the practice, custom and method employed by said Commission prior to May, 1956.

(c) That the Court grant plaintiff such further and additional relief by such judicial review, as is authorized by the provisions of G.S. 1949, 55-606.

Exhibit "A" to Petition for Judicial Review Was "*Report and Order*" Effective February 1, 1958, Set Forth Counter-Abstract, Pages 203-209.

Exhibit "B" Attached to and Made a Part of Petition for Judicial Review (without signatures or proof of service).

EXHIBIT "B" TO APPENDIX "J"

BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS.

In the matter of determining the market demand for natural gas for the Hugoton Gas Field of Kearny, Finney, Grant, Haskell, Morton, Stevens, Seward, Stanton and Hamilton Counties, Kansas, the deliverability and acreage attributable to each of the respective wells therein, and fixing gas production percentages and quotas for wells within said field for the proration period extending from April 1, to September 30, 1956, both inclusive.	Docket No. 51,342-C (C-4888) Conservation Division
In the matter of determining the market demand for natural gas for the Hugoton Gas Field of Kearny, Finney, Grant, Haskell Morton, Stevens, Seward, Stanton and Hamilton Counties, Kansas, the deliverability and acreage attributable to each of the respective wells therein, and fixing gas production percentages and quotas for wells within said field for the proration period extending from October 1, 1956, to March 31, 1957, both inclusive.	Docket No. 53,042-C (C-5171) Conservation Division
In the matter of determining the market demand for natural gas for the Hugoton Gas Field of Kearny, Finney, Grant, Haskell, Morton, Stevens, Seward, Stanton and Hamilton Counties, Kansas, the deliverability and acreage attributable to each of the respective wells therein, and fixing gas production percentages and quotas for wells within said field for the proration period extending from April 1, to September 30, 1957, both inclusive.	Docket No. 54,220-C (C-5454) Conservation Division
In the matter of Cities Service Gas Company, Colorado Interstate Gas Company, Hugoton Production Company, Kansas-Colorado Utilities, Inc., Kansas-Nebraska Natural Gas Company, Inc., Northern Natural Gas Company, Panhandle Eastern Pipe Line Company, Quinque Oil and Gas Production Company, United Carbon Company, Shallow Water Refining Company, to show cause	Docket No. 51,488-C (C-4916) Conservation Division

Petition for Rehearing.

Comes Now Northern Natural Gas Company, a corporation, petitioner, and hereby petitions this Commission for an order setting aside and granting a rehearing in the above captioned proceedings, with respect to this Commission's undated Report and Order (hereinafter referred to as "Report and Order") made to be effective February 1st, 1958, and in support thereof shows:

1. That Petitioner is a party to each and all of the above captioned proceedings, and has participated in the hearings held therein by the Commission.

2. That the *Report and Order of the Commission* issued by the Commission (undated) in these proceedings was received by the Petitioner on January 31, 1958.

3. That said *Report and Order* is unlawful, illegal, unconstitutional, beyond the jurisdiction of the Commission and void in that:

(a) That said *Report and Order* is contrary to and beyond the scope of the powers granted the Commission under the Statutes of Kansas and particularly relating to "Production and Conservation of Natural Gas", Section 55-701 *et seq.* G.S. of Kansas, 1949.

(b) That said *Report and Order* is contrary to and in direct conflict with the long established construction by said Commission of Section 55-703, G.S. of Kansas, 1949, and consistent operation of the Commission with respect to proration of gas in the Hugoton Gas Field of Kansas thereunder preceding the period of hearings herein on which said *Report and Order* is based.

(c) That said *Report and Order* is contrary to and in direct conflict with said Commission's Basic Proration Order for the Hugoton Field promul-

gated and adopted by said Commission March 21, 1944, in Docket No. C-164, effective March 31, 1944, as amended.

(d) That said *Report and Order* is so vague and indefinite, inconsistent and ambiguous as to be impossible of reasonable interpretation or proper administration.

(e) That said *Report and Order* purports to amend said Commission's Basic Proration Order for the Hugoton Field in a proceeding not noticed to any of the parties thereto as being a proceeding for the amendment of such Basic Proration Order, in violation of the due process clauses of the Constitution of the United States.

(f) That said *Report and Order* purports to authorize said Commission to fix the market demand for gas from the Hugoton Gas Field of Kansas in excess of the true and actual market demand for gas therefrom and provides that the Commission "will give effect to" not only the actual requirements and demands of purchasers for gas from said field (the true market demand) but also

(1) Such purchasers takes of gas from other sources of supply, without restriction, both within the State of Kansas and in other states, to which such purchasers are connected.

(2) Such purchasers total markets for natural gas, whether in the State of Kansas or in other states, the rate of increase therein compared to the rate of increase in the takes from the Kansas portion of the Hugoton Field.

(3) Any other factors, conditions or circumstances that said Commission may determine would aid the Commission in establishing the market demand for gas from the Kansas Hugoton Field without defining what are

such other factors, conditions or circumstances or the weight to be given to any thereof, being violative of Section 18 of the Bill of Rights in the Constitution of the State of Kansas and the 14th Amendment to the Constitution of the United States, and not a proper exercise of police power.

(g) That said *Report and Order* is contrary to the evidence, is not supported by any competent evidence and is wholly unauthorized, unfounded and unwarranted either under the evidence or under the applicable statute hereinbefore referred to.

(h) That said *Report and Order* is an unreasonable exercise and abuse of the administrative discretion granted said Commission under the gas conservation statutes of Kansas, is arbitrary, capricious and otherwise not in accordance with law.

(i) That said *Report and Order* casts an unlawful burden upon, impairs and impedes the interstate operations of Petitioner in the purchase, transportation and sale for resale of natural gas taken from said Hugoton Field in Kansas in violation of the commerce clause of the Constitution of the United States and subsisting provisions of the Natural Gas Act, 15 U.S.C.A. 717, *et seq.*

(j) That the effect of said *Report and Order* upon the interstate operations of Petitioner, as a natural gas company, destroys and takes its contract and property rights without compensation in violation of Section 17, Article 2 of the Constitution of the State of Kansas and Sections 8 and 10, Article I, and the 14th Amendment to the Constitution of the United States.

(k) That the effect of said *Report and Order* is to destroy rather than to protect correlative rights of producers of gas in the Hugoton Field of Kansas and to not only permit but to precipitate and

cause unfair, cognizable drainage from one producing well to another within said Field and thereby occasion uncompensated cognizable drainage between the separately owned, developed leases in said Field—completely disregarding and being contrary to the requirements of the pertinent gas conservation statutes of Kansas, Section 55-701 *et seq.*, G.S. of Kansas, 1949, requiring that production from said field be taken currently from each producing lease as to cause each developed lease to currently and ultimately produce approximately the amount of gas lying thereunder.

(l) That said *Report and Order* is unlawfully discriminatory and denies Petitioner equal protection of the law and abridges Petitioner's privileges and immunities in contravention of the Fourteenth Amendment to the Constitution of the United States.

4. That said *Report and Order* should be set aside and the findings of fact and conclusions of law heretofore submitted to said Commission by Petitioner should be adopted in lieu thereof, each and all of such requested findings of fact and conclusions being supported by the competent evidence in the record.

5. That the "Interim Orders" entered by said Commission in the above dockets entered in its dockets Nos. 51,342-C (C-4888), 53,042-C (C-5171), 54,220-C (C-5454) and 55,705-C (C-5792), purporting, on an interim basis, to fix and apportion among the producing gas wells in the Kansas Hugoton Field, monthly a fictitious market demand, *i. e.*, far in excess of the demands for production of gas of the takers of gas from said Field, were not definitive orders, were not dispositive of the cause before said Commission, reserved material questions, issues and directions for final determination upon the conclusion of

said proceedings, were not in accord with the competent evidence in the record and unless corrected to conform with the competent evidence in the record are invalid, unlawful, discriminatory and should be set aside. That each and all of said "Interim Orders" insofar as they purported to fix the market demand for said Field and grant the separate wells therein allowables in excess of the actual market for gas from said Field, properly allocated and spread among the wells in said Field, were invalid and unlawful for each and all of the reasons hereinabove assigned for the invalidity and unlawfulness of the Commission's *Report and Order*.

Wherefore, and by reason of the foregoing, Petitioner prays that its Petition for Rehearing be granted and that upon such rehearing said *Report and Order* and "Interim Orders" be set aside and appropriate orders entered in accordance with the evidence presented and the applicable law.

Summary showing Status of Wells Connected to the Several Gas Purchasers in the Kansas Hugoton Gas Field as of October 1, 1959

ase Name	WL NO	Loca- tion	Acreage	Adjstd. Deliv.	Basic Allow.	Sept. Allowbl.	Sept. Runs	Overage Allowed	Undrge. Allowd.	Undrge. Cancld.	Oct. Cur. Allowbl.	Oct. Net Allowbl.
rv.	1316		843125	1457888	15297379	59029359	9022000	57183	50063227	1315	10557802	60563846
erst.	345		221212	307874	3580786	5360218	557316	51780	4852225	2455	2229565	7030010
Prod.	152		96358	326179	3612558	5102356	2313214	10202	2799344		2434555	5223697
Util.	29		17995	22229	267456	128721	183876	110655	55500		160976	105621
o. Nat.	289		187261	310603	3231658	5280613	2589896	159623	2849552	788	2249335	4939264
Nat.	1115		701745	1508827	14250834	80752951	5544796	84889	71205224	4087820	10926706	62047041
East.	521		325753	737532	7663326	593542-	6278364	7120691	248785		5341089	4530517-
e Oil G	13		7586	7684	87174	130490	28430	5864	105515	2409	55648	155299
Water	2		1280		10906	38000	4195		33805			33805
Carson	117		74720	154329	1581488	6663057	1039617		5628440		1117631	6741071
	3899		2477035	4813145	49683567	161892223	27561706	7600887	137836617	4094787	35073307	185309037

APPENDIX "K"

Petition for Judicial Review.

IN THE DISTRICT COURT OF FINNEY COUNTY, KANSAS.

NORTHERN NATURAL GAS COMPANY, Petitioner, vs. THE STATE CORPORATION COMMISSION OF THE STATE OF KANSAS, MARION BEATTY, Chairman, RICHARD C. BYRD and HARRY G. WILES, as Members of said Commission, and their respective successors in office, Respondent.	No. 10611

Petition for Judicial Review.

Comes Now the Petitioner, Northern Natural Gas Company, and for its petition for judicial review herein against the action of the above named Respondent, alleges and shows to the Court as follows:

(1) That Petitioner is a corporation, organized under the laws of the State of Delaware, with its principal office at Omaha, Nebraska, and duly licensed to transact business in the State of Kansas; that it is now and has been during all times material herein a natural gas company as defined in the Natural Gas Act, as amended (15 U.S.C.A. 717, *et seq.*), and engaged generally in the business of purchasing natural gas for transportation and sale

in interstate commerce for resale under the provisions of said Act by means of pipe line system and facilities extending from Texas into and through Oklahoma and Kansas and into Nebraska, Iowa, Minnesota and South Dakota; that in such operation, and as an integral part thereof, petitioner has, among other things, entered into contracts with certain producers in Finney County, Kansas, and other counties in the Kansas Hugoton Field, which contracts are presently subsisting and have subsisted during all times material herein, for the purchase of natural gas produced in and from said Field; that after such purchase, such gas is transported and sold along with other purchased gas for resale, both in interstate and intrastate commerce in Kansas and other states. Petitioner is an interested party in captioned proceedings, its substantial gas reserves in the Kansas Hugoton Field being affected by the herein complained of order, such gas reserves dedicated for sale to petitioner being necessary and essential to petitioner's pipe line operation for the interstate transmission of gas for sale for resale in interstate commerce.

(2) That Respondent, the State Corporation Commission of the State of Kansas, is an administrative body, created by legislative enactment, with its principal place of business and postoffice address at State Office Building, Topeka, Kansas, but the Conservation Division thereof having its place of business and address at 500 Insurance Building, Wichita, Kansas; that Marion Beatty is Chairman of said Commission and Harry G. Wiles and Richard C. Byrd are members of said Commission.

(3) That this is an action under G.S. 1949, 55-707, for a judicial review of proceedings before the State Corporation Commission of the State of Kansas in its Docket No. 58,436-C (C-6677) wherein it issued its "Gas Proration Order and Report" for January, 1959, for the Hugo-

ton Gas field in Kansas. That a full and complete transcript of the proceedings had in Docket No. 58,436-C (C-6677) together with all exhibits therein introduced and attached thereto, is filed in this Court and is made a part hereof in the same manner and to the same extent as though set out herein verbatim. That a copy of said "Gas Proration Order and Report" for January, 1959, marked Exhibit "A", is filed herewith as a part of the transcript in this case. That upon issuance of said Order for January, 1959, Petitioner timely filed with Respondent a Petition for Rehearing, which was duly denied by Respondent on February 11, 1959; that a true copy of said order is marked Exhibit "B" attached hereto and made a part hereof.

(4) That on September 25 and 26, 1958, a hearing was had in Liberal, Kansas, before this Respondent for the purpose of determining the market demand for natural gas in the Hugoton Field of Kansas for the proration period extending from October 1, 1958 to March 31, 1959, both inclusive, in said Docket No. 58,436-C (C-6677). That at said hearing the various pipe line companies, which are purchasers of gas in the Kansas Hugoton Field, submitted and introduced into evidence their nominations for gas from said Field for the six months period and also submitted to the Commission at its request evidence as to other sources of supply (other than Kansas Hugoton) from which they were purchasing gas both within and without the State of Kansas. That all of said pipe line companies (with the exception of Panhandle Eastern Pipe Line Company) objected to the admission in evidence of all such information which pertained to other fields, whether said other common sources of supply were located within or without the State of Kansas. That Exhibits 1, 2, 4, 5 and 6 were admitted in evidence over ob-

jections by Petitioner, which objections were based on the fact that the information just referred to and contained in said exhibits, was incompetent, irrelevant and immaterial. That Petitioner furnished the Commission with its nominations for the six months period covering its proposed takes from the Kansas Hugoton Field. That Exhibit 3 was introduced by Respondent to show the nominations filed with said Respondent by all of the pipe line companies purchasing in the field. That said Exhibits 1 to 6, inclusive, not only set out the nominations of all the purchasers in the field for the period from October 1, 1958, to March 31, 1959, inclusive, but also (except as to Exhibit 3) included the information requested by the staff as to the sources of supply of all gas available to purchasers from all other states, the reserves in Kansas and all other states, rates of take from such other states and other additional information, all of which exhibits insofar as they reflected facts and information outside the Kansas Hugoton Field were incompetent, irrelevant and immaterial and were objected to by Petitioner.

(5) That Dr. Charles F. Weinaug testified at this market demand hearing on September 25 and 26, 1958, for the Southwest Kansas Royalty Owners Association; that said witness presented Exhibits 7 to 19, inclusive, which pertained to his study of the Kansas Hugoton Field as compared with other fields outside the State of Kansas; that said witness testified that Respondent should determine market demand in a manner that would permit the producers in the Kansas Hugoton Field to "properly share" in the national market for gas and to "properly share" in the combined market of gas for Kansas and Oklahoma. That all of the testimony of Dr. Weinaug was incompetent, irrelevant and immaterial and was objected to by this Petitioner repeatedly. That the Statutes of

Kansas do not permit statewide proration, but limit proration to each particular field or common source of supply. That the only competent evidence would be that evidence that pertained only to the Kansas Hugoton Field itself. That as to Exhibits 7 to 19, inclusive, sponsored by Dr. Weinaug, objections were made by Petitioner, but Respondent did not rule on the objections at the time, but took them under advisement. That the transcript reveals that the Commission never made a final ruling on Petitioner's objections. That, apparently, from the record all of such exhibits were admitted in evidence and have been considered by Respondent as competent evidence in issuing its Gas Proration Order and Report for January, 1959.

(6) That all competent evidence presented to the Commission clearly established that in the final analysis market demand is equal to the actual purchases from the field; that the initial market demand should be determined by the Commission according to the nominations of the various purchasers, assuming that the nominations actually constitute the purchasers' best estimate of their requirements from the field for the proration period. That at the end of the proration period corrections must be made for the difference between the estimates shown by the nominations at the beginning of the period and the actual purchases as shown by the records at the end of the period.

(7) That the method suggested by Dr. Weinaug for determining market demand is illegal and void and not authorized by the Statutes of this State for the reason that their method of determining market demand requires a comparison of the Kansas Hugoton Field with other common sources of supply. That the Statutes of Kansas do not permit such a comparison for the reason

that the market demand for the Kansas Hugoton Field is in no way related to the market demand for any other gas field. That such proposals are based on a principle which requires the Commission to *establish* market demand for a gas field. The market demand for gas from any field is established by the purchasers and the Commission's statutory function is to *determine* that demand which exists and not to create or establish it.

(8) That at said market demand hearing for the proration period extending from October 1, 1958, to March 31, 1959, both inclusive, Respondent Commission improperly stated that in fixing market demand it would take into consideration all of those factors set out in its undated "Report and Order of the Commission" effective February 1, 1958.

(9) That the Order of Respondent Commission determining market demand for the Hugoton Field for January, 1959, is upon its face neither determined by runs, nominations or recommendations by anybody, anywhere at any time; that apparently it attempted to use those factors set out in said undated "Report and Order of the Commission" effective February 1, 1958, which order in its entirety has been adjudicated to be and is null and void and of no force and effect.

(10) That petitioner seeks a review of the January, 1959, Gas Proration Order and Report for the Hugoton Field in Docket No. 58,436-C (C-6677). That said Proration Order for January, 1959, is dated January 28, 1959, but was not issued and mailed by Respondent until February 5, 1959, and was not received by Petitioner until February 6, 1959. That under Rule 82-2-211 of the General Rules and Regulations covering the proration of natural gas, purchasers of gas are required to report to

the Commission (on forms furnished by the Commission) on or before the 10th of each month the amount of gas purchased in the preceding month. That by January 10, 1959, all such information as to gas purchased during the month of December, 1958, had been furnished to the Commission so that the January, 1959 Order was received long after the expiration of the January, 1959, proration period. That accordingly its issuance was *ex post facto* and had no reasonable relationship to the purpose for which it was issued, namely—to prospectively prorate production in the Hugoton Field.

(11) That true market demand for gas from said Field can be neither more, nor less, than the amount of gas this Petitioner, or any other pipe line company, will purchase from said Field, transport and sell during any particular period. That the January, 1959, proration order was not based upon nominations made by the pipe line purchasers, including this Petitioner, but was based solely upon what Respondent *thought the market demand for Hugoton gas should have been.* That no separate hearing was had covering the market demand for the month of January, 1959. That the only hearing in Docket No. 58,436-C (C-6677) was held on September 25 and 26, 1958, and covered the six months period from October 1, 1958, to March 31, 1959, both inclusive, and that evidence introduced at that hearing, such as it was, was the only evidence upon which the Respondent had to rely.

(12) That the Proration Order and Report for January, 1959, issued by Respondent does not follow the method authorized and required pursuant to the Basic Proration Order for the Hugoton Field in determining the current allowable for each well each month. That the current allowable for wells was determined prior to May, 1956, by taking the market demand based upon nomina-

tions made by gas purchasers in the Hugoton Field and first adding thereto the cancelled underages for the previous month and *subtracting* therefrom the amount of underproduction (nominations in excess of market demand) or *adding* thereto the amount of overproduction for the previous month. That beginning with the month of August, and thereafter up to and including the Order for January, 1959, Respondent no longer followed its practice of subtracting underproduction or adding overproduction for each month, but allowed each well to carry, in addition to its current allowable, such underproduction or overproduction as may have accrued to it. That this method of calculating allowables has resulted in the creating and establishing of a "fictitious market".

(13) That the January, 1959, Proration Order attempted to create and establish a *fictitious market demand*. That Respondent Commission has no power and authority under the Statutes of Kansas to create or establish a market, but is required by law to prorate and divide the true market which actually exists, between the various pipe line purchasers so that all producers and royalty owners shall be permitted to produce and sell,

> "* * * only such portion of all the natural gas that may be currently produced without waste and to satisfy the market demands, as will permit each developed lease to ultimately produce approximately the amount of gas underlying such developed lease and currently produce proportionately with other developed leases in said common source of supply without uncompensated cognizable drainage between separately-owned, developed leases or parts thereof. * * *" G.S. 1949, 55-703.

That as further evidence of the fact that Respondent Commission has established a fictitious market demand, it found by its January, 1959, Proration Order that there

existed a market demand in the Hugoton Field of Kansas for said month of January, 1959, 172,958,042 MCF of gas which such volume was more than three (3) times the volume reflected by the nominations of all takers and purchasers of gas from said field for said month.

(14) That the Order for January, 1959, by establishing a fictitious and arbitrary market, has granted allowables which cannot be bought, produced and sold and has, therefore, caused tremendous "underages" to accumulate. That by such practice proration is no longer in effect and correlative rights have been damaged.

(15) That said Order for January, 1959, is contrary to the evidence received at the hearing on September 25 and 26, 1958, in Docket No. 58,436-C (C-6677) and is not supported by any substantial competent evidence.

(16) That said Order for January, 1959, is unlawful and void for the reason that it is contrary to and unauthorized by the Basic Proration Order for the Hugoton Field, as amended (Docket C-164), and the existing gas conservation statutes of the State of Kansas.

(17) That said Order for January, 1959, casts an unlawful burden upon, impairs and impedes the interstate operations of this petitioner, in the purchase, transportation and sale for resale of natural gas taken from said Hugoton Field, all in violation of the commerce clauses of the Constitution of the United States and of subsisting provisions of the Natural Gas Act, 15 U.S.C.A., § 717.

(18) That the said Order for January, 1959, constitutes an arbitrary, unauthorized and unlawful attempt on the part of Respondent to regulate operations of petitioner with respect to its interstate operations and interstate markets and is in direct interference with the regu-

latory authority and the jurisdiction of the Federal Power Commission as granted to said Federal Power Commission by the Congress of the United States under the Natural Gas Act, 15 U.S.C.A., § 717.

(19) That said Order for January, 1959, impairs the interstate operations of Petitioner and impairs its contract and property rights in violation of Section 17, Article 2 of the Constitution of the State of Kansas, and Sections 8 and 10, Article I, and the Fourteenth Amendment of the Constitution of the United States.

(20) That said Order for January, 1959, is unreasonable, arbitrary, unlawful and inconsistent with the provisions of the Basic Proration Order for the Hugoton Field, as amended, and the Statutes of Kansas in that, if said Order is permitted to remain in effect it will impair, rather than protect, the correlative rights of the mineral and leasehold owners within the Hugoton Field of Kansas, and encourage rather than prevent the commission of waste within said Field, and will result in discrimination between the various parties taking gas from said Field, all in violation of the conservation statutes of the State of Kansas and the Basic Proration Order for said Field, as amended.

(21) That for all of the reasons hereinabove stated and alleged, Petitioner respectfully asks this Court at this time to immediately and forthwith grant a stay of execution of enforcement of the Proration Order for January, 1959, so that the allowable thereby unlawfully established shall not, pending the final determination herein, be deemed to be valid and enforceable.

Wherefore, Petitioner Prays:

(a) That this Court grant instanter a stay of execution of enforcement of the Proration Order for January,

1959, so that such unlawful allowables shall not be valid and enforceable prior to a final determination herein of their status;

(b) That this Court enter an order finding that said Order for January, 1959, is unreasonable, arbitrary, unlawful and void insofar as it fails to show that the pipe line runs from the Hugoton Field during said month were and are the true market demand for that period and that in determining such market demand and well allowables based thereon deductions should be made for past "underages" and additions should be made for past "overages";

(c) That this Court enter an order finding that this Respondent has no statutory power under the Laws of Kansas to create or establish a market and that in that regard its jurisdiction is limited to proper proration of that market which does exist, as between the various leases and the pipe line purchasers so that waste will be prevented, and the correlative rights of royalty owners, producers and pipe line purchasers will be fully protected; and

(d) That Petitioner be granted any and all other relief to which it may be entitled hereunder.

Exhibit "A" to Petition for Judicial Review was "Report and Order of the Commission" dated October 8, 1958, heretofore set forth—Counter-Abstract, pages 112-116.

APPENDIX "L"

Kansas Statute, G. S. 1961 Supp., 55-703

55-703. Production regulations; rules and formulas. Whenever the available production of natural gas from any common source of supply is in excess of the market de-

mands for such gas from such common source of supply, or whenever the market demands for natural gas from any common source of supply can be fulfilled only by the production of natural gas therefrom under conditions constituting waste as herein defined, or whenever the commission finds and determines that the orderly development of, and production of natural gas from any common source of supply requires the exercise of its jurisdiction, then any person, firm or corporation having the right to produce natural gas therefrom, may produce only such portion of all the natural gas that may be currently produced without waste and to satisfy the market demands, as will permit each developed lease to ultimately produce approximately the amount of gas underlying such developed lease and currently produce proportionately with other developed leases in said common source of supply without uncompensated cognizable drainage between separately-owned, developed leases or parts thereof. The commission shall so regulate the taking of natural gas from any and all such common sources of supply within this state as to prevent the inequitable or unfair taking from such common source of supply by any person, firm or corporation and to prevent unreasonable discrimination *in favor of any one common source of supply as against another and* in favor of or against any producer in any such common source of supply. In promulgating rules, regulations and formulas, to attain such results the commission shall give equitable consideration to acreage, pressure, open flow, porosity, permeability and thickness of pay, and such other factors, conditions and circumstances as may exist in the common source of supply under consideration at the time, as may be pertinent: *Provided, however*, That the daily takes of gas from any well *in an unprorated gas pool* shall not exceed twenty-five percent (25%) of its open flow: *Provided further, however*, That

the provisions of this act shall not apply to any common source of supply in which the average open flow of all the producing wells therein is not in excess of seven hundred fifty thousand (750,000) cubic feet per day. *The commission in determining the market demand for gas from a common source of supply shall consider the reasonable current requirements for current consumption and use within and without the state, and such other factors, conditions, or circumstances that would aid in establishing the market demand.* [G.S. 1949, § 55-703; L. 1959, ch. 237, § 1; June 30.] [1959 amendment italicized]

APPENDIX "M"

IN THE DISTRICT COURT OF FINNEY COUNTY, KANSAS

NORTHERN NATURAL GAS COMPANY, a corporation,
Plaintiff,

vs.

STATE CORPORATION COMMISSION OF KANSAS, MARION BEATTY, Chairman, RICHARD C. BYRD and HARRY G. WILES, as members of said Commission and their respective successors in office,
Defendant.

No. .....

Petition for Judicial Review of Northern Natural Gas Company

(Commission's "Proration Order and Report" dated November 20, 1959)

COMES NOW the Petitioner, Northern Natural Gas Company, and for its petition for judicial review herein

against the action of the above named Respondent, alleges and shows to the Court as follows:

1. That Petitioner is a corporation, organized under the laws of the State of Delaware, with its principal office at Omaha, Nebraska, and duly licensed to transact business in the State of Kansas; that it is now and has been during all times material herein engaged generally in the business of purchasing natural gas for transportation by means of pipe line system and facilities extending from Texas into and through Oklahoma and Kansas and into Nebraska, Iowa, Minnesota and South Dakota; that in such operation, and as an integral part thereof, petitioner has, among other things, entered into about 125 contracts with certain producers in Finney County, Kansas and other Kansas counties within the confines of the Kansas Hugoton Gas Field, which contracts are presently subsisting and have subsisted during all times material herein, for the purchase of natural gas produced in and from said field, and under which contracts (a) the recoverable gas under the lease acreage covered by said contracts was and is dedicated to be sold to Northern Natural Gas Company, and (b) express provisions are included in all such contracts which prescribe a certain method of apportionment amongst all such producers of Northern's requirements for gas from the said field; that petitioner is a natural gas company as defined in the Natural Gas Act, as amended (15 USCA 717, et seq) and is engaged in the transportation of natural gas in interstate commerce and the sale in interstate commerce of natural gas for resale for domestic, commercial, industrial and other uses. That such sales of natural gas are sales in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial and other uses and as such are subject to the provisions of said Natural Gas Act and to the juris-

diction of the Federal Power Commission thereunder. Petitioner is an interested party in captioned proceedings, its substantial gas reserves in the Kansas Hugoton Gas Field and contract rights with respect thereto being affected by the herein complained of order, such gas reserves dedicated for sale to petitioner being necessary and essential to petitioner's pipe line operation for the interstate transmission of gas for sale in interstate commerce for resale.

2. That Respondent, the State Corporation Commission of the State of Kansas, is an administrative body, created by legislative enactment, with its principal place of business and post office address at State Office Building, Topeka, Kansas, but the Conservation Division thereof having its place of business and address at 500 Insurance Building, Wichita, Kansas; that Harry G. Wiles is Chairman of said Commission and Marion Beatty and Richard C. Byrd are members of said Commission.

3. That this is an action under G.S. 1949, 55-707, for a judicial review of proceedings before the State Corporation Commission of the State of Kansas in its Docket No. 61,366-C (C-7378), wherein it issued its "October Allowable Order" dated November 20, 1959. That a full and complete transcript of the proceedings had in said docket, together with all exhibits therein introduced and attached thereto, is being filed in this court and are made a part hereof to the same extent as though set out verbatim. That a copy of said "October Allowable Order" dated November 20, 1959, is marked Exhibit "A", attached hereto and made a part hereof. That upon issuance of said "October Allowable Order" petitioner timely filed with Respondent a Petition for Rehearing, a true copy of which, without proof of service is marked Exhibit "B" attached hereto and made a part heretof. That said Petition for Rehearing was thereafter denied by Commission.

4. That said "October Allowable Order" dated November 20, 1959, is unlawful, illegal, unconstitutional, beyond the jurisdiction of the Commission and void for each, every and all of the reasons set forth in Petitioner's Petition for Rehearing, Exhibit "B" attached hereto and incorporated herein.

5. That for all the reasons hereinabove alleged, Petitioner respectfully asks said Court at this time to grant a stay of execution of the "October Allowable Order" dated November 20, 1959.

WHEREFORE, Petitioner prays:

(a) That this Court grant instanter a stay of execution of enforcement of the "October Allowable Order" dated November 20, 1959;

(b) That this Court enter judgment herein setting aside said "October Allowable Order" dated November 20, 1959, for the reasons that it is unreasonable, arbitrary, unlawful, unconstitutional, beyond the jurisdiction of the Commission and void; and

(c) That Petitioner be granted all other relief to which Petitioner may be entitled hereunder.

EXHIBIT A TO APPENDIX "M"

Commission Gas Proration Order and Report for October, 1959.

"October Allowable Order."

Now on this 20th day of November, 1959, the above-entitled matter comes before the Commission for consideration and determination of a schedule of production allowable for wells in the Hugoton Gas Field for the month of October, 1959, and the Commission finds:

1. That after notice as provided by the statutes and rules and regulations, the above-entitled matter was heard by the Commission at Wichita, Kansas, on September 25 and 30, and October 1 and 2, 1959, evidence thereon taken and all parties afforded an opportunity to be heard.

2. That the Commission has heretofore determined the market demand for gas from the Kansas Hugoton Gas Field for the month of October, 1959, to be 30,291,800 M.c.f. at 14.65 pounds p.s.i.a.

3. That no evidence was produced at said hearing to show that waste would result or correlative rights would be violated if the wells in the Kansas Hugoton Gas Field were allowed to produce this market demand.

4. That production in excess of said market demand of 30,291,800 M.c.f. plus or minus net underages or overages and cancelled underages would result in waste as that term is defined by the Statutes of the State of Kansas; that under the Basic Order No. 44-3-21 entered in Docket No. C-164, as amended, the current allowable for any given period consists of the reasonable market demand for that period plus the cancelled underage for the prior month of record, and that after giving effect to such cancelled underage as shown by the records of the Commission as of October 1, 1959, the current allowable for the month of October, 1959, should be fixed at 35,073,284 M.c.f.; that the net allowable for any given period consists of the current allowable for that period plus or minus the net underages or overages as the case may be, and that after giving effect to such underages or overages as shown by the records of the Commission as of October 1, 1959, the resulting net allowable for October, 1959, is 165,309,014 M.c.f.; that in order to prevent waste the production of natural gas from said common source of supply should be restricted or limited to said amount for said period.

5. That in order to protect the respective correlative rights of the producers and other interested parties having a right to withdraw gas from the common reservoir and in order to permit the wells and leases therein to currently produce proportionately so that each may ultimately produce approximately the amount of gas underlying it, production quotas for the several developed leases and wells should be established during said period in accordance with the Basic Order No. 44-3-21 entered in Docket No. C-164, as amended.

6. That the acreage attributable to and the individual well deliverability factors of the several wells in said field are in the amounts and figures as set out in the October, 1959, allowable report which is attached hereto, marked Exhibit "A" and hereby referred to and made a part hereof by reference; that the allocation of the allowed production within and between the wells in said common source of supply and the individual well production quotas should be made and established in the manner and form prescribed in said Basic Order No. 44-3-21, entered in Docket No. C-164, as amended, and when so made and established are in the amounts and figures as set out in said schedule Exhibit "A".

7. That such allowable should constitute the maximum permissible production from such wells and leases for the period covered by this order.

It Is, Therefore, by the Commission Ordered: That the current allowable for natural gas from the Hugoton Gas Field located in Kearny, Finney, Grant, Haskell, Morton, Stevens, Seward, Stanton and Hamilton Counties, Kansas, for the month of October, 1959, be and it is hereby established at 35,073,284 M.c.f. The resulting total net allowed production of natural gas from said field for said

month of October, 1959, is 165,309,014 M.c.f. and the same is hereby allocated among the several developed leases and wells, in said field in the manner prescribed by said Basic Order No. 44-3-21 entered in Docket No. C-164, as amended, and when so distributed, each well's production quota is in the amount set out in the schedule, Exhibit "A" attached hereto; that production of natural gas from said common source of supply and from each of the developed wells and leases therein shall be limited during the period covered hereby to the respective allowables established for the said field and each of the wells therein.

It Is Further Ordered: That the acreage and deliverability factors and current position of the wells as set out in schedule Exhibit "A", attached to this order, be, and the same are hereby adopted and established.

The Commission retains jurisdiction of the subject matter and the parties for the purpose of entering such further order or orders as from time to time it may deem proper.

By the Commission It is So Ordered.

Wiles, Chm. Beatty, Com.; Byrd, Com.

Raymond B. Harvey,

(Seal) Secretary.

JRT:fr

Explanation.

HUGOTON FIELD—OCTOBER, 1959

The allowables shown on Exhibit "A" are computed in accordance with Order No. 44-3-21, the Basic Order for the Hugoton Field. The October current allowable for each well is determined by multiplying the product of its deliverability and acreage factor by $7.24184058 \left(\frac{35,073,284}{4,843,145}\right)$

the relationship of the total current allowable to the total deliverability adjusted for acreage.

The letter (-S) following net allowable indicate wells over-produced and to be shut in until reduced in accordance with Basic Order Provisions.

September net allowable	161,892,223 M.c.f.
September runs	27,561,706 M.c.f.
Underage	134,330,517 M.c.f.
October market demand	30,291,800 M.c.f.
Plus August cancelled underage	4,781,484 M.c.f.
October current allowable	35,073,284 M.c.f.
Plus net underage allowed	130,235,730 M.c.f.
October net allowable	165,309,014 M.c.f.

Total adjusted deliverability is 4,843,145

Deliverability standard pressure is 261.9 pounds.

Summary showing Status of Wells Connected to the Several Gas Purchasers in the Kansas Hugoton Gas Field as of October 1, 1959

Lease Code	Lease Name	WL NO	Location	Acreage	Adjstd. Deliv.	Basic Allow.	Sept. Allowbl.	Sept. Runs	Overage Allowed	Undrge. Allowd.	Undrge. Cancld.	Oct. Cur. Allowbl.	Oct. Net Allowbl.
Cities Serv.		1316		845125	1457888	15297379	5902259	9022000	57183	50063227	1315	10557802	60563846
Col. Interst.		345		221212	307874	3580786	5360218	557316	51780	4852225	2455	2229565	7030010
Hugoton Prod.		152		96358	336179	3612558	5102356	2313214	10202	2799344		2434555	5223697
Kan. Col. Util.		29		17995	22229	267456	128721	183876	110655	55500		160976	105821
Kan.-Neb. Nat		289		187261	310603	3231658	5230613	2589896	159623	2849552	788	2249335	4939264
Northern Nat.		1115		701745	1508827	14350834	30752951	5544796	84889	71205224	4087829	10926706	82047041
Panhdle. East.		521		325753	737532	7663326	593542-	6278364	7120691	248785		5341089	4530817-
Quinque Oil G		13		7586	7684	87174	130450	28430	5864	105515	2409	55648	155299
Shallow Water		2		1280		10906	38000	4195		33805			33805
United Carson		117		74720	154329	1581488	6663057	1039617		5623440		1117631	6741074
		3899		2477035	4843145	49683567	161892223	27561796	7600887	137836617	4094787	35073307	185309037

EXHIBIT B TO APPENDIX "M"

BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

In the matter of determining the market demand for natural gas for the Hugoton Gas Field of Kearny, Finney, Grant, Haskell, Morton, Stevens, Seward, Stanton and Hamilton Counties, Kansas, the deliverability and acreage attributable to each of the respective wells therein, and fixing gas production percentages and quotas for wells within said field for the proration period extending from October 1, 1959, to March 31, 1960, both inclusive.	Docket No. 61,366-C (C-7378) Conservation Division

PETITION FOR REHEARING

COMES NOW Northern Natural Gas Company, a corporation, petitioner, and hereby petitions this Commission for an order setting aside and granting a rehearing in the above captioned proceeding with respect to Commission's "October (1959) Allowable Order" and in support thereof shows:

1. Petitioner is an interested party in captioned proceedings, its substantial gas reserves in the Kansas Hugoton Field being affected by such order, such dedicated gas reserves for sale to petitioner being necessary and essential to the operation of petitioner's pipe line operation for the interstate transmission of gas for sale for resale in interstate commerce.

2. That the "October Allowable Order", dated November 20, 1959, was received by petitioner on December 3, 1959.

3. That said "October Allowable Order" is unlawful, illegal, unconstitutional, beyond the jurisdiction of the Commission and void, in that:

(a) That it is contrary to, unauthorized by and beyond the scope of the powers granted the Commission under the statutes of Kansas and particularly those relating to "Production and conservation of natural gas", Sections 55-701, et seq. G.S. of Kansas, 1949, as amended.

(b) That it is contrary to and in direct conflict with the long established construction by said Commission of G.S. 1949 55-703 and the consistent operation of the Commission with respect to the determination of allowables and the scheduling of production allowables for the wells in said field in the proration of such market demand thereunder preceding May, 1956.

(c) That it is contrary to and in direct conflict with said Commission's Basic Proration Order, as amended, for the Hugoton Field promulgated and adopted by said Commission March 21, 1944 in Docket C-164, initially effective March 31, 1944.

(d) That it is so vague and indefinite, inconsistent and ambiguous, as to be impossible of reasonable interpretation or proper administration.

(e) That it purports to amend said Commission's Basic Proration Order for the Hugoton Field in a proceeding not noticed to any of the parties thereto as being a proceeding for the amendment of said Basic Proration Order, in violation of the due process clause of the Constitution of the United States.

(f) That it purports to establish, rather than determine, the market demand for gas from said field in

excess of the true and actual market demand for gas therefrom for the month of October, 1959, and to set forth a schedule of production allowables for the wells in said field without regard to the true market demand for gas therefrom; it creates a fictitious market demand in that the amount of gas authorized to be produced is in excess of the actual requirements of purchasers or takers of gas in said field from the common source of supply, in violation of said §55-703, as amended.

(g) That it compounds the errors in the calculated Schedule of production allowables for the wells in said field by adding rather than subtracting accumulated net underages (allowables theretofore granted in excess of true market demand) and in failing to add overages, if any, in the determination of such true market demand before calculating such schedule of production allowables for said wells; that said errors in such calculation are further compounded therein by the use of a volume of underages in production far in excess of the true and actual legal underages in production existing.

(h) That it purports to give effect to all of the factors and conclusions in Commission's "Order and Report," dated November 10, 1959, in said Hugoton Field, which is in all respects invalid, unlawful, and beyond the jurisdiction of the Commission as determined in judicial review proceedings on a like issue by the District Court of Finney County, Kansas, on or about December 15, 1958.

(i) That it is contrary to the evidence, is not supported by any competent evidence and is wholly unauthorized, unfounded and unwarranted, either under the evidence or under the applicable statutes, hereinbefore referred to.

(j) That it is an unreasonable exercise and abuse of the administrative discretion granted said Commission under the gas conservation statutes of Kansas, is

arbitrary, capricious and otherwise not in accordance with law.

(k) That its effect is to destroy rather than to protect correlative rights of producers of gas in the Kansas Hugoton Field and to not only permit but precipitate and cause unfair cognizable drainage from one producing well to another within said field, completely disregarding and being contrary to the requirements of the gas conservation statutes of Kansas requiring that production from said field be taken currently from each producing lease so as to cause each developed lease to currently and ultimately produce approximately the amount of gas lying thereunder.

(l) Its import and effect is to project Commission's powers and authority beyond the borders of the State of Kansas and thereby constitute an exercise by the Commission of extraterritorial jurisdiction not authorized by 55-703, as amended.

4. If subsisting statutes of Kansas, including 55-703 thereof, as amended, are construed to authorize the issuance of said "October Allowable Order", then under the evidence in the record and as applied to the operations of petitioner, said statute or statutes and said "October Allowable Order" based thereon are unconstitutional and void in that:

(a) Said statute 55-703, as amended, does not fix a reasonably clear standard to govern the exercise of Commission's authority as required by the provisions of Section 1 of Article II of the Kansas Constitution and the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

(b) Said statute, with respect to determining market demand, authorizes said Commission to project its powers and authority beyond the borders of the state, constitutes an exercise of extraterritorial juris

tion, and violates the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

(c) Said statute authorizes said Commission to obstruct, burden, regulate or impede the transportation of gas in interstate commerce, in violation of the Commerce Clause to the Federal Constitution.

(d) Said statute authorizes Commission to burden, impede, impair and unreasonably discriminate against Petitioner and its vested rights under the laws of the United States to create, operate and maintain adequate and sufficient reserves of natural gas in order to adequately, efficiently, and consistently supply its interstate and other markets with natural gas in violation not only of the Commerce Clause of the Federal Constitution, the Contract Clause thereof, the Fourteenth Amendment thereto, but also invades the jurisdiction and authority of the Federal Power Commission under the provisions of the Natural Gas Act.

(e) Said statute authorizes Commission to usurp, invade, and impair the jurisdiction and authority of agencies and commissions in other states in the exercise of their authority and jurisdiction under the laws of said states in the lawful regulation of the production, proration, and conservation of natural gas in said states, reserved to said states under the provisions of the Tenth Amendment to the Federal Constitution, and will cause such other states and the agencies and commissions therein to take retaliatory steps and measures for self-protection, with the ultimate result of burdening, impeding and unreasonably discriminating against interstate commerce and the ultimate consumers of natural gas protected by the provisions of the Natural Gas Act, all in violation not only of the Commerce Clause to the Federal Constitution, but also the Fourteenth Amendment thereto, and the Natural Gas Act; and

(f) Said statute, with respect to Commission's determination of market demand, is arbitrary, unrea-

sonable, and irrational, having no relationship to any justifying public purpose, and violates the Fourteenth Amendment to the United States Constitution.

WHEREFORE, and by reason of the foregoing, petitioner prays that its petition for rehearing be granted and that upon such rehearing said "October Allowable Order" be set aside and appropriate order entered in accordance with the evidence presented and the applicable law.

LAWRENCE I. SHAW
F. VINSON ROACH
JACK C. OSBORNE
2223 Dodge St.,
Omaha, Nebraska

ADAMS, JONES, ROBINSON AND MANKA
202 Board of Trade Bldg.
Wichita, Kansas

By.....
Attorneys for Petitioner

APPENDIX "N"

IN THE DISTRICT COURT OF FINNEY COUNTY, KANSAS.

NORTHERN NATURAL GAS COMPANY, a corporation,
Plaintiff,
vs.
STATE CORPORATION COMMISSION, OF KANSAS, MARION BEATTY, Chairman, RICHARD C. BYRD and HARRY G. WILES, as members of said Commission and their respective successors in office,
Defendant.
No. 10747

Petition for Rehearing of Cities Service Gas Company.

Cities Service Gas Company on December 8, 1959, filed its Petition for Rehearing with the State Corporation Commission with respect to Commission's "Gas Proration Order and Report" dated November 20, 1959, which Petition for Rehearing was denied by the Commission on December 16, 1959; that copy of such Petition for Rehearing without formal parts is as follows:

PETITION OF CITIES SERVICE GAS COMPANY FOR REHEARING

Comes Now Cities Service Gas Company, a party to the captioned proceedings, and hereby petitions this Honorable Commission to grant a rehearing in the above entitled matter as authorized by law on the Order and proceedings of the Commission in connection therewith, determining the production allowable from the Kansas Hugo-

ton Field for the month of October, 1959, which Order is dated and purports to be made November 20, 1959, and based upon the Order of the Commission dated November 10, 1959, which determines the market demand for natural gas from the Kansas Hugoton Field for the proration period extending from October 1, 1959, to March 31, 1960, both inclusive, for the reasons and upon the grounds following, namely:

(1) Said Order, under the competent, relevant and material evidence submitted to the Commission at the hearing preceding the issuance of said Order, is unlawful, beyond the jurisdiction of Commission to issue, and void in that:

(a) the same is unauthorized by and contrary to the provisions of G.S. 1949, 55-703, as amended;

(b) its import and effect is to abrogate and destroy, rather than to foster and protect correlative rights as contemplated by statute and defined by the Commission's own subsisting regulations; to allow rather than to prevent the inequitable or unfair taking of gas from such field; to create rather than prevent unreasonable discrimination among producers in the field; to prohibit rather than to permit each developed lease in said field to ultimately produce approximately the amount of gas underlying such developed lease, and currently produce proportionately with other developed leases in said field without uncompensated cognizable drainage between separately owned developed leases, or parts thereof, and to allow rather than to prevent waste of natural gas, as such word is used in its ordinary meaning and as defined by statute, all contrary to and in violation of the purposes, provisions and objectives of the Kansas gas production, proration, and conservation statutes, particularly 55-703, as amended;

(c) it creates an allowable production of gas from said common source of supply, not only in excess of Petitioner's actual requirements for gas in said field from such common source of supply for the period covered thereby, but also creates unratable production therein and adds to Commission's determined market demand evidenced by its six (6) months' Order of November 16, supra, and without a hearing thereon, canceled and uncanceled underages, contrary to and in violation of Commission's Basic Proration Order for said field and §55-703, as amended, all of which was unnecessary to accomplish the purposes and objectives of said statute and said Basic Proration Order.

(d) it operates to change the definition of a common source of supply of natural gas established by the statute 55-702, the Basic Proration Order for the Kansas Hugoton Field, and statewide Rule 82-2-201, without an amendment of the statute or Commission's Orders or Rules in the manner prescribed by law;

(e) its import and effect is to project Commission's powers and authority beyond the borders of the State of Kansas and thereby constitute an exercise by the Commission of extraterritorial jurisdiction not authorized by 55-703, as amended; and

(f) it, and the findings upon which said Order purports to be based, are contrary to the evidence and not supported by the competent, material and relevant testimony adduced.

(2) If subsisting statutes of Kansas, including §55-703 thereof, as amended, are construed to authorize the issuance of said Order, then under the evidence in the record as applied to the operations of Petitioner, said statute or statutes and said Order based thereon are unconstitutional and void in that:

(a) said statute §55-703, as amended, does not fix a reasonably clear standard to govern the exercise of

Commission's authority as required by the provisions of Section 1 of Article II of the Kansas Constitution and the Due Process Clause of the Fourteenth Amendment to the United States Constitution;

(b) said statute, with respect to determining market demand, authorizes said Commission to project its powers and authority beyond the borders of the state, constitutes an exercise of extraterritorial jurisdiction, and violates the Due Process Clause of the Fourteenth Amendment to the United States Constitution;

(c) said statute authorizes said Commission to obstruct, burden, regulate or impede the transportation of gas in interstate commerce, in violation of the Commerce Clause to the Federal Constitution;

(d) said statute authorizes Commission to burden, impede, impair and unreasonably discriminate against Petitioner and its vested rights under the laws of the United States to create, operate and maintain adequate and sufficient reserves of natural gas in order to adequately, efficiently, and consistently supply its interstate and other markets with natural gas in violation not only of the Commerce Clause of the Federal Constitution, the Contract Clause thereof, the Fourteenth Amendment thereto but also invades the jurisdiction and authority of the Federal Power Commission under the provisions of the Natural Gas Act;

(e) said statute authorizes Commission to usurp, invade, and impair the jurisdiction and authority of agencies and commissions in other states in the exercise of their authority and jurisdiction under the laws of said states in the lawful regulation of the production, proration, and conservation of natural gas in said states, reserved to said states under the provisions of the Tenth Amendment to the Federal Constitution, and will cause such other states and the agencies and commissions therein to take retaliatory steps and meas-

ures for self-protection, with the ultimate result of burdening, impeding and unreasonably discriminating against interstate commerce and the ultimate consumers of natural gas protected by the provisions of the Natural Gas Act, all in violation not only of the Commerce Clause to the Federal Constitution, but also the Fourteenth Amendment thereto, and the Natural Gas Act; and

(f) said statute, with respect to Commission's determination of market demand, is arbitrary, unreasonably discriminatory, and irrational, having no relationship to any justifying public purpose and violates the Fourteenth Amendment and the Contract Clause to the United States Constitution.

(3) While said allowable Order purports to be made on November 20, 1959, it was not received by Petitioner until December 3, 1959. Should it be asserted by Commission that this Petition for Rehearing is out of time because not filed within ten (10) days from the date of the making of said Order, then and in that event Petitioner here asserts that such procedure would deny to it procedural due process of law in violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution and §18 of the Bill of Rights of the Kansas Constitution.

Wherefore, premises considered, Petitioner Cities Service Gas Company prays that this Petition for Rehearing be granted, and that upon such rehearing said Order of Commission be set aside and held for naught, and an appropriate Order be entered by Commission in accordance with the law and the competent, relevant, and material evidence adduced before Commission.

Petition for Judicial Review by Cities Service Gas Company

(of Commission's "October, 1959 Allowable Order")

COMES NOW Plaintiff Cities Service Gas Company; and for its Petition for Judicial Review herein against the State Corporation Commission of Kansas and the Members thereof, alleges:

(1) This action is brought by plaintiff against defendants pursuant to and as authorized by G.S. 1949 55-707 and 606, for a judicial review of the October, 1959 Allowable Order of said Commission dated November 20, 1959, and proceedings in connection therewith determining the Production Allowable from said Field for said month of October, which Order of November 20 is based upon the Order of said Commission dated November 10, 1959, determining the Market Demand for natural gas from the Kansas Hugoton Field, for the proration period extending from October 1, 1959 to March 31, 1960, both inclusive.

(2) Plaintiff is a corporation organized under the laws of the State of Delaware, with its principal office in the First National Building at Oklahoma City, Oklahoma, and duly authorized to transact business in the State of Kansas as a foreign corporation. Defendant, Corporation Commission, is an administrative agency of the State of Kansas created by statute, with its principal office in the State Office Building, Topeka, Kansas, and by law given jurisdiction, among other matters, of the production, conservation and proration of natural gas. Other defendants named in caption hereof are Chairman and Members, respectively, of said Commission, currently serving as such.

(3) The property affected by said Order of Commission is located in the Kansas Hugoton Gas Field, compris-

ing several different Counties in Western Kansas, including, among other Counties, Finney County.

(4) Plaintiff is now, and has been during all times material herein, a corporate natural gas company, as defined in the Natural Gas Act, as amended, 15 U.S.C.A. 717 (et seq.). It is engaged generally in the business of purchasing natural gas for transportation and sale in interstate commerce for resale under the provisions of said Act by means of a pipeline system and facilities extending from Texas into and through Oklahoma and Kansas and into Nebraska and Missouri. In operating its said interstate gas pipeline system and as an integral part thereof, plaintiff has, among other things, entered into Gas Purchase Contracts with certain producers of gas in the Kansas Hugoton Field in Finney and other Counties in said Field, which contracts are currently subsisting and have been during all times material herein. After such gas is purchased by plaintiff under said respective Gas Purchase Contract, it is transported along with other gas it produces and purchases for resale in interstate and intrastate commerce in Kansas and other states in which it operates. The gas purchased under said Gas Purchase Contracts from said Kansas Hugoton Field comes from gas reserves therein dedicated under said contracts to plaintiff for the purpose of supplying its interstate and intrastate markets.

(5) Prior to the filing of this action, plaintiff, being a party to the proceedings before said Commission, leading to the issuance of said Order here under review, duly filed with said Commission, after the issuance of said Order and within the time and in the manner required by law, its petition for rehearing, which was by said Commission denied.

(6) Said Order, under the competent, relevant and material evidence submitted to the Commission at the

hearing preceding the issuance of said Order, is unlawful, beyond the jurisdiction of Commission to issue, and void in that:

(a) the same is unauthorized by and contrary to the provisions of G.S. 1949 55-703, as amended;

(b) its import and effect is to abrogate and destroy, rather than to foster and protect correlative rights as contemplated by statute and defined by the Commission's own subsisting regulations; to allow rather than to prevent the inequitable or unfair taking of gas from such field; to create rather than prevent unreasonable discrimination among producers in the field; to prohibit rather than to permit each developed lease in said field to ultimately produce approximately the amount of gas underlying such developed lease, and currently produce proportionately with other developed leases in said field without uncompensated cognizable drainage between separately owned developed leases, or parts thereof, and to allow rather than to prevent waste of natural gas, as such word is used in its ordinary meaning and as defined by statute, all contrary to and in violation of the purposes, provisions and objectives of the Kansas gas production, proration, and conservation statutes, particularly §55-703 thereof, as amended;

(c) it creates an allowable production of gas from said common source of supply, not only in excess of Petitioner's actual requirements for gas in said field from such common source of supply for the period covered thereby, but also creates unratable production therein and adds to Commission's determined market demand evidenced by its six (6) months' Order of November 10, supra, and without a hearing thereon, canceled and uncanceled underages, contrary to and in violation of Commission's Basic Proration Order for said field and §55-703, as amended, all of which was unnecessary to accomplish the purposes

and objectives of said statute and said Basic Proration Order.

(d) it operates to change the definition of a common source of supply of natural gas established by the statute 55-702, the Basic Proration Order for the Kansas Hugoton Field, and statewide Rule 82-2-201, without an amendment of the statute or Commission's Orders or Rules in the manner prescribed by law;

(e) its import and effect is to project Commission's powers and authority beyond the borders of the State of Kansas and thereby constitute an exercise by the Commission of extraterritorial jurisdiction not authorized by 55-703, as amended; and

(f) it, and the findings upon which said Order purports to be based, are contrary to the evidence and not supported by the competent, material and relevant testimony adduced.

(7) If subsisting statutes of Kansas, including §55-703 thereof, as amended, are construed to authorize the issuance of said Order, then under the evidence in the record as applied to the operations of Plaintiff, said statute or statutes and said Order based thereon are unconstitutional and void in that:

(a) said statute §55-703, as amended, does not fix a reasonably clear standard to govern the exercise of Commission's authority, as required by the provisions of §1 of Article II of the Kansas Constitution and the due Process Clause of the Fourteenth Amendment to the United States Constitution;

(b) said statute, with respect to determining Market Demand, authorizes said Commission to project its powers and authority beyond the borders of the state, constitutes an exercise of extraterritorial jurisdiction, and violates the Due Process Clause of the

Fourteenth Amendment to the United States Constitution.

(c) said statute authorizes said Commission to obstruct, burden, regulate or impede the transportation of gas in interstate commerce, in violation of the Commerce Clause to the Federal Constitution;

(d) said statute authorizes Commission to burden, impede, impair and unreasonably discriminate against Plaintiff and its vested rights under the laws of the United States to create, operate and maintain adequate and sufficient reserves of natural gas in order to adequately, efficiently and consistently supply its interstate and other markets with natural gas, in violation not only of the Commerce Clause of the Federal Constitution, the Contract Clause thereof, the Fourteenth Amendment thereto, but also invades the jurisdiction and authority of the Federal Power Commission under the provisions of the Natural Gas Act;

(e) said statute authorizes Commission to usurp, invade, and impair the jurisdiction and authority of agencies and commissions in other states in the exercise of their authority and jurisdiction under the laws of said states in the lawful regulation of the production, proration, and conservation of natural gas in said states, reserved to said states under the provisions of the Tenth Amendment to the Federal Constitution, and will cause such other states and the agencies and commissions therein to take retaliatory steps and measures for self-protection, with the ultimate result of burdening, impeding and unreasonably discriminating against interstate commerce and the ultimate consumers of natural gas protected by the provisions of the Natural Gas Act, all in violation not only of the Commerce Clause to the Federal Constitution, but also, the Fourteenth Amendment thereto and the Natural Gas Act; and

(f) said statute, with respect to Commission's determination of Market Demand, is arbitrary, unreasonably discriminatory, and irrational, having no relationship to any justifying public purpose, and violates the Fourteenth Amendment and the Contract Clause to the United States Constitution.

(8) While the Order of said Commission here under attack and at issue is dated November 20, 1959, it was not served upon or received by plaintiff until December 3, 1959. Should it be asserted in this action by defendants that plaintiff's petition for rehearing, referred to in ¶5 hereof, was not filed within the time prescribed by statute and by reason thereof plaintiff is not entitled to maintain this action, then, and in that event, plaintiff here asserts that the procedure adopted by the Commission in the making, issuance and service of said Order of November 20, 1959, would deny plaintiff due process of law in violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

WHEREFORE, plaintiff prays that:

(a) this Court grant instanter an Order staying and superseding said Order of said Commission in the manner and upon such terms and conditions as the Court deems proper, as authorized by the statute in such cases;

(b) this Court, upon the hearing of this action, enter a judgment setting aside said Order of said Commission in so far as the allowable gas production in said Field fixed by said Order is in excess of the actual requirements of the purchasers and takers of gas in said Field from the common source of supply, and grant plaintiff herein such other and additional relief as authorized by law; and

(c) plaintiff recover its costs accrued and accruing herein.

APPENDIX "O"

IN THE DISTRICT COURT OF STEVENS COUNTY, KANSAS.

SOUTHWEST KANSAS ROYALTY OWNERS' ASSOCIATION, Petitioner, vs. THE STATE CORPORATION COMMISSION OF THE STATE OF KANSAS, Respondent.	Case No. 4105

Journal Entry.

Now on this 13th day of February, a regular judicial day of the January, 1960 term, this action and the actions consolidated with it by order of the court, came on for trial pursuant to a setting made by the court on the first day of the term.

Petitioner appears by Dale M. Stucky, Robert Cornwell and A. E. Kramer, its attorneys; the Kansas Corporation Commission appears by J. Robert Wilson and John Townsend, its attorneys and Panhandle Eastern Pipe Line Company appears by C. C. Linley and Chas. Vance, its attorneys. All parties announce ready for trial; there are no other appearances.

The Court, having stated that Northern Natural Gas Company, Inc., Cities Service Gas Company and Colorado Interstate Gas Company did not appear on the first day of the term when the case was set for hearing, inquires

whether any of said companies lacked actual notice of the order of this Court entered on February 6, 1960.

There is offered in evidence and ordered filed in the case the affidavit of Chas. Vance showing that certified copies of said Court order was mailed by certified mail to all parties and their attorneys on February 6, 1960; that the attached return receipts show delivery to all concerned on February 8, 1960. Thereupon counsel state to the Court that all parties and their attorneys had actual notice of this setting for trial on the merits by mail and otherwise. The court examines the files and finds that, although pleadings filed since the first day of the term appear to have been noticed for the first day of the March term, no application for a continuance has been made by any of the parties.

Thereupon the Court waits for one hour. There are no further appearances. The Court proceeds to hear the case upon argument of counsel and the transcript. At the conclusion thereof, it takes the same under advisement.

Thereafter, and on March 10, 1960, the Court, after being fully advised in the premises finds:

1. That upon the Court's own motion, the orders made February 6, 1960, should be and the same are hereby set aside insofar as said orders affect and consolidate the cases pending in the Finney County District Court.

2. That the Report and Order dated November 10, 1959, and subsequent allowable orders of the State Corporation Commission are based on substantial competent evidence and are lawful and valid. Said report and order makes reasonable provisions for an orderly process correcting inequities (existing for more than ten years and which have progressively increased) discriminating in

favor of the correlative rights of producers and royalty owners in the Oklahoma Hugoton Gas Field and against those in the Kansas Hugoton Gas Field; as provided by the Statutes of Kansas, Section 55-703, 1959 supplement.

It Is Therefore Ordered, Adjudged and Decreed that the Report and Order dated November 10, 1959, and subsequent allowable orders of the State Corporation Commission be and they are hereby affirmed.

/s/ L. L. Morgan,
Judge, District Court.

APPENDIX "P"

IN THE DISTRICT COURT OF STEVENS COUNTY, KANSAS.

Southwest Kansas Royalty Owners Association et al., Petitioners, vs. The State Corporation Commission of the State of Kansas et al., Respondents.	No. 4105

Journal Entry.

Now on this 12th day of May, 1960, this matter comes on for hearing pursuant to notice to all parties on the Southwest Kansas Royalty Owners Association's motion to settle and determine the form of a Journal Entry reflecting the rulings and decisions made by this court on March 19, 1960, the Southwest Kansas Royalty Owners Association appears by and through its attorney, Robert T. Cornwell; the State Corporation Commission appears by and through its attorney, John T. Townsend; and Pan-

handle Eastern Pipe Line Company appears by and through its attorneys, C. C. Linley and Charles Vance. The court, after reviewing the file and being well advised, finds and determines that the following Journal Entry should be and hereby is entered as the court's journal entry covering the hearing held herein on March 19, 1960:

Journal Entry.

Now on this 19th day of March, 1960, this matter comes on for hearing on the motions filed by Northern Natural Gas Company, Panhandle Eastern Pipe Line Company and the Southwest Kansas Royalty Owners Association. The State Corporation Commission appears by and through its general counsel J. Robert Wilson; Panhandle Eastern Pipe Line Company appears by and through its attorneys, C. C. Linley and Charles Vance; the Southwest Kansas Royalty Owners Association appears by its attorneys Dale M. Stucky and Robert C. Cornwell; and Mark Adams, Mark Adams II, Floyd Jensen and Daniel Hopkins announce to the court that they appear specially for Northern Natural Gas Company to present its motions filed on February 13, 1960, and March 14, 1960.

Thereupon Northern Natural Gas Company presents its motion, filed on March 14, 1960, to vacate the court's judgment entered herein on March 10, 1960, and the court, after hearing argument of counsel, finds that such motion should be overruled.

It Is So Ordered.

Thereupon Northern Natural Gas Company presents its motion, filed on March 14, 1960, to vacate the court's judgment entered herein on March 10, 1960, and to allow Northern Natural Gas Company to participate in the presentation of said judicial proceedings on the merits, and

the court, after hearing argument of counsel, finds that such motion should be overruled.

It Is So Ordered.

Thereupon Northern Natural Gas Company presents its motion, filed on February 13, 1960, to quash, and the court, after hearing argument of counsel, finds that such motion should be overruled.

It Is So Ordered.

Thereupon Northern Natural Gas Company presents its motion, filed on December 26, 1959, to dismiss, and the court, after hearing argument of counsel, finds that such motion is not properly before this court for determination at this time, and the court finds, in the alternative, that if such motion is properly before this court for determination at this time, such motion should be overruled.

It Is So Ordered.

Thereupon Northern Natural Gas Company, Panhandle Eastern Pipe Line Company and the Southwest Kansas Royalty Owners Association present their motions for a new trial, and the court, after hearing argument of counsel, finds that such motions should be overruled.

It Is So Ordered.

Judge Morgan.

APPENDIX "Q"

BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

Docket No. C-164

Conservation Division

Order No. 44-3-21

In the Matter of Establishing Rules and Regulations Relating to the Production, Sale and Conservation of Natural Gas in the Hugoton Field of Kearny, Finney, Grant, Haskell, Morton, Stevens, Seward, Stanton, and Hamilton Counties, Kansas.

Basic Proration Order for the Hugoton Gas Field —in Effect on October 7, 1959

Now on this 21st day of March, 1944, this matter comes on for consideration and determination upon the investigation instituted by the Commission to determine whether the provisions of the Basic Order herein, as issued on October 28, 1942, should be changed, modified, or amended; and the Commission, having heard the evidence at its hearing held at Wichita, Kansas, on September 28, 1943, having concluded its investigation, and being fully advised in the premises, finds that certain further additional facts have been ascertained concerning the Hugoton Gas Field and the proper method which should be used in fixing well quotas to the end that each developed lease will be enabled to currently produce its daily allowable so that ultimately such developed lease will have an opportunity to produce approximately the amount of gas which un-

derlies such lease; that in order to properly carry out the intent of the statutes of the State of Kansas relating to the conservation of natural gas, that the Basic Proration Order for the Hugoton Gas Field, dated October 28, 1942, should be rescinded and superseded by a new Basic Order; that in connection with such new Basic Order, and based upon the evidence before it, the Commission finds:

a. That the Hugoton Field is a common source of supply of natural gas located in Kearny, Finney, Grant, Haskell, Morton, Stevens, Seward, Stanton and Hamilton counties, Kansas.[1] The field extends south to the Kansas-Oklahoma state line and into the Oklahoma Panhandle. The exact boundaries of the field in Kansas are not definitely established due to the lack of sufficient development. It is indicated by present development that the Kansas portion of the field is sixty-five miles long and forty miles wide. Approximately 340 commercial gas wells have been drilled in said field and over 350,000,000,000 cubic feet of gas have been withdrawn from the common reservoir. Each and all of the wells have a daily open-flow in excess of 750,000 cubic feet and the total combined open-flow of all the wells is approximately 4,200,000,000 cubic feet daily. The presently developed acreage held by production totals 217,600 acres as compared with an estimated proven acreage of 1,500,000 acres. Eighteen of the wells are not connected to pipe lines and are not producing, and have not produced in the past, any gas because of this fact, although some of them were drilled as long as eight years ago. The owners of the unconnected wells have, since their respective wells were completed, generally been ready and willing to make connections and sell their gas to the pipe lines purchasing

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1. As amended by order dated October 13, 1948

gas from said field; most of said owners of unconnected wells have been refused pipeline connections. The connected wells have produced and are producing large quantities of gas.[2]

b. That the market demand for gas produced in the Hugoton Field in Kansas is approximately 238,000,000 cubic feet daily and it is therefore evident that the available production of the wells is in excess of the market demand for gas produced from the common source of supply, notwithstanding that said wells are produced at not to exceed twenty-five per cent of their open-flow capacities. One hundred and eighty-eight of the wells are located on 640-acre tracts while eighty-four wells are on 160-acre locations. Since 1936, practically all of the drilling has occurred upon 640-acre tracts and, insofar as present and future drilling is concerned, 640 acres appears to be the standard drilling unit. Localized drilling or development has occurred in several portions of the field but it is not, however, wholly concentrated in any one particular area.

c. That gas is found in porous limestone and dolomite and is encountered at an average depth of from 2,700 to 2,800 feet below the surface. Impervious shale bodies are encountered within the producing horizons throughout the field, but it is evident that the gas producing formations are interconnected and therefore constitute one common source of supply. The thickness of the gas-producing horizons or zones varies considerably, although a sand thickness of from fifty to seventy-five feet is representative of the geological conditions existing generally throughout the field. A fair average porosity for limestone bodies such as are encountered in the Hugoton Field is 18.2 per-

2 As amended by order dated October 13, 1948

cent. The number of gas-producing horizons, as shown by the well logs or drill cuttings, varies between wells and tracts, most of them containing from three to five gas-producing zones.

d. That the virgin shut-in wellhead pressure was 435 pounds per square inch, while, at the present time, shut-in wellhead pressures have been observed as low as 371 pounds. Likewise, variations in the pressures as between wells and leases exist throughout the field. The movement of gas within a common reservoir is governed by pressure differentials; the gas migrates from the areas of higher pressure to the areas of lower pressure. In its virgin state, the pressure within a common source of supply is the same, or practically the same, at all points. When gas is produced from a well, the pressure within the reservoir is produced in the vicinity of the well bore. This causes gas in the formation to expand into the well. When a producing well is shut in, the pressure in the formation in the vicinity of the well will build up from that existing during production and this again tends to equalize the pressure within the formation and demonstrates that the continued migration of gas from high pressure to low pressure areas is occurring. Gas migrates within the reservoir from developed leases having higher pressures to other developed leases having lower pressures in accordance with the same principles which govern the movement of gas from the formation into the several well bores If the migration or drainage of gas across property lines is not equalized by counter-drainage, the developed leases so drained will not ultimately produce approximately the amount of gas underlying them, either at the time the wells were drilled thereon or at the time this order becomes effective. The extent of the movement or drainage of gas between developed leases depends upon the magnitude of

variation in pressures existing as between developed leases, the areas contained in such leases and the amounts of gas withdrawn.

e. That the evidence demonstrates that pressure differentials or gradients exist within the reservoir and between developed leases located sufficiently close to each other to cause drainage between such leases. The shut-in wellhead pressures of some of the said unconnected wells have decreased since they were originally tested, even though the said wells have not produced any gas. Since pressure is one of the measurements of the amounts of gas within the reservoir, the decreases in pressure within the reservoir under leases containing wells which have produced no gas show that gas has been drained from such leases to or toward other developed leases, having pipeline connections, in greater quantities than it has moved to said leases. Therefore, uncompensated, cognizable and undue drainage has occurred within the common source of supply and between developed leases therein.

f. That since there exists disproportionate production from the wells and leases in said field which impairs the correlative rights of many of the owners of developed leases, it is necessary for the Commission to take jurisdiction and to prescribe regulations for the production of gas from said wells and others that may be hereafter completed in said field to the end that each person, firm, or corporation having the right to drill into and produce natural gas from said field may take therefrom only such proportion of the amount that may be produced therefrom without waste as will permit each well or developed lease to produce ultimately at least approximately the amount of gas underlying the land or lease on which such well is located and currently produce proportionately with the other wells in said field. That the said disproportionate

production which has occurred and is occurring has caused undue, cognizable, preventable and noncompensated drainage of gas from developed properties, tracts and leases to other developed properties, tracts and leases in and throughout said field; that various developed properties have suffered undue, premature and inequitable depletion by reason of such conditions and practices, as is evidenced by the differences in the shut-in wellhead pressure of the various wells throughout the field. The wells which have produced the greater amounts of gas generally show the lower pressures, while the wells which have had smaller withdrawals generally show the higher pressures. Wherever this is not true, the fact that wells, which have produced considerable quantities of gas, have not suffered material decreases in pressure, indicates that they have probably drained adjoining leases to a greater extent than the wells which show pressure declines. The present and past production from the wells in said field is and has been inequitable and unfair and has caused unreasonable discrimination against various developed properties, denying to many owners of developed properties the opportunity to produce currently and proportionately with the owners of other wells in said field, and denying to many owners of developed properties the opportunity to ultimately produce at least approximately the amount of gas underlying their developed tracts.

g. That one well completed in the said formation can adequately and sufficiently drain 640 acres without causing waste and considering the cost of drilling, equipping and operating one well in comparison with the estimated recovery per acre and the slow rate at which the production for said field can be ratably and nonwastefully marketed, the Commission finds that the basic acreage unit to be used in the proration formula hereinafter prescribed should be 640 acres, and that in no instance

shall more than 640 acres be attributable to a well for the purpose of calculating the acreage factor except by specific order of the Commission as hereinafter provided. The acreage factor of a well shall equal the number of acres held by production from said well divided by 640. Expressed in a mathematical formula, said acreage factor may be set forth as follows:

$$\text{Acreage Factor} = \frac{\text{No. of acres attributable}}{640}$$

In the event that more than one well is located on any one lease, the acreage to be used in calculating the acreage factor of each well on such lease shall be determined by dividing the total number of acres by the number of wells, and the quotient thereof shall be the acreage used in making said calculation. To be considered as attributable to a well, the acreage shall be contiguous or adjoining, with the well located as near as practicable in the center thereof, and in no event nearer than 1,250 feet from any boundary line of the unit; except, however, that this restriction shall not apply to leases or tracts which have already been unitized in compliance with previous orders issued by the Commission, or to wells now in existence and located on tracts containing less than 640 acres.

Such wells, now in existence and located on tracts containing less than 640 acres, may be attributed acreage which is held by production from such well, if such acreage is located within a two-mile radius of the well, or upon application, and after notice and hearing, the Commission may authorize the inclusion of acreage as being attributable to a well now in existence if the acreage lies within a three-mile radius of the well and if, upon hearing, it is shown to the Commission that it is impossible or impracticable to unitize the tract upon which such well is located with other acreage lying within two miles thereof:

Provided, however, That the Commission may, either on complaint filed, or upon its own motion, after notice and hearing, exclude any acreage from inclusion in any unit which, in its judgment, is not productive and which should not be considered as proven acreage.

The term "held by production," as used in this paragraph shall mean that acreage so held participates in the production upon a royalty basis and does not receive delay rentals.

That there are located in the field certain so-called "short" sections, according to the United States Governmental Survey, and that some of such sections contain materially less than 640 acres. Wherever possible, such sections should be unitized among themselves, or with other leases or tracts, in order to form units of approximately 640 acres: *Provided, however*, That short sections located along the Kansas-Oklahoma state line shall be unitized only with the tracts immediately north thereof and the units thus formed may contain more than 640 acres.

In cases where it is impossible to create such units, the Commission may, upon proper application, authorize the unitization of such short sections containing materially less than 640 acres with other tract or tracts, and under such conditions the acreage attributable to any well or wells located upon such unit may be greater than the 640 acres hereinbefore provided. However, no such unit shall receive an acreage factor attributing more than 640 acres without an express order of the Commission, and no presumption shall arise from this order that such authorization will be granted in any specific instance, and in no instance shall any unit so formed be granted more than 800 acres. It is further provided, that producers and owners of gas wells which were completed prior to January 30, 1940 (being the date upon which the first basic order of pro-

ration was issued herein), who also possess the right to produce natural gas from other lands and leases within the limits set forth in this provision, may attribute such lands and leases, not exceeding 640 acres, to a unit for production hereunder (whether such leases are held by delay rentals or otherwise) for a term not exceeding one year from the date hereof. Within such period of one year the owner or producer of such wells shall file with the Conservation Director satisfactory evidence that the owners of the minerals have become participants in the royalty payments as otherwise hereinafter required. Any such lands which are not within said period so unitized for purposes of sharing the royalties from the wells shall henceforth be excluded as a part of any such production unit.

That there are located in the field certain so-called "long" sections, according to the United States Governmental Survey, and that such "long" sections lie along the north (correction) line of Township 26 South in Hamilton, Kearny, and Finney counties, and that such "long" sections contain materially more than 640 acres. The Commission finds that, notwithstanding anything else in this order to the contrary, the acreage permitted to be attributable to any well drilled in accordance with rules in any one of such "long" sections may exceed 640 acres but shall not exceed 900 acres, and that the acreage factor for any well located in a "long" section shall be equal to the number of acres not in excess of 900 acres, attributed to such well divided by 640. Expressed in a mathematical formula, said acreage factor for such a well may be set as follows:

$$\text{Acreage Factor} = \frac{\text{No. of acres attributable}}{640}$$

In the event that more than one well is located in any of the so-called "long" sections, the acreage to be used

in calculating the acreage factor of each well on such "long" section shall not exceed 640 acres. To have in excess of 640 acres considered as attributable to a well drilled on any such "long" section, only one well shall be drilled thereon in accordance with these rules, the acreage attributable shall be contiguous or adjoining and all such acreage attributable shall be located within the boundary lines of the "long" section on which the well is located. No acreage located without the boundary lines of such "long" section on which only one well is located shall be considered in figuring the acreage attributable to such well. The well, when only one well is to be drilled to any one "long" section, may be drilled, at the operator's discretion, at any point within the "long" section not farther than 467 feet from the center thereof; in no event shall the well be located nearer than 1,250 feet from the boundary line of the "long" section.

Any well capable of producing natural gas, in existence at the time of the adoption of this order, located in any of the subject "long" sections, shall be considered as the well for such "long" section, regardless of its location within the section, and shall be entitled to have attributed thereto, when properly unitized, acreage within said section not in excess of 900 acres.[3]

h. It shall be lawful for the owners of two or more separately-owned contiguous tracts of land, or of the minerals located thereunder, by appropriate contract between such owners, to cause such lands or minerals to be consolidated as one production unit and to apportion the royalties accruing from the production of the well or wells, to be divided among them as they may agree and when

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3. As amended by orders dated April 2, 1947, and August 21, 1950.

such agreement shall have been made, the royalties arising from the production of the well or wells shall be allocated as the parties thereto may agree. It shall further be lawful for any operator or well owner to agree with the owners of lands or minerals to become part of a production unit and to share the royalties upon such basis as the operator and landowner or mineral owners may agree.[4]

i. That the producers in the field have been required, by custom, to lay gathering lines from their wells to the pipe lines of the purchasers. A lease is, therefore, undeveloped until a gas-producing well has been completed thereon and the owner or operator thereof has tendered gas to a purchaser at the purchaser's pipe line. Before a well is entitled to an allowable, the owner or operator thereof should either tender the gas for sale at the prevailing price being paid in the field to a pipeline company or others who are purchasing in the field in which such a well is located, or demonstrate that he will and can produce the gas allowed such a well for lawful purposes. Such tendership may be shown by constructing a line from the well to such pipe line or other purchasing facilities or by filing with the Director of the Conservation Division an affidavit setting forth that the said producer is ready, willing and able to construct said line from the well to the facilities of the purchaser, and to sell gas to the purchaser at the prevailing price in the field, but that the purchaser refuses to buy the gas when so tendered. In the event that such purchaser seeks to controvert the fact or the terms of any such tendership, such purchaser may file a protest with the Commission setting forth the facts upon which such purchaser relies in making his protest, and the Commission shall, after due notice to all interested parties, hear the protest and determine whether or not,

4. As amended by order dated January 10, 1940

under all of the facts and conditions existing, that such tender should not be considered as having been properly made, and whether the well shall be entitled to an allowable as a result of such tender.

j. The adoption of a formula that will enable each well to currently produce its allowable and ultimately produce approximately the amount of gas underlying the lease upon which it is located is the object sought to be accomplished by this order. The testimony at the numerous hearings held by the Commission indicates that there are many factors which should be considered in connection with the f nula, such as, acreage, pressures, open-flow, porosity and thickness of the pay. It is conceded by practically all of the witnesses that acreage is one of the most important of these factors and should be one of the factors included in the formula. It is also the opinion of many of the expert witnesses that the other factors above enumerated, namely, pressures, open-flow, porosity and thickness of pay, are all taken into consideration and given their proper weight when the deliverability of the well to put gas into a pipeline against pipeline pressure is taken into account. Therefore, a formula that considers acreage and deliverability and gives due value to both should result in the establishment of well allowables that will permit each well to currently produce its allowable and to ultimately produce approximately the amount of gas which underlies the lease upon which it is located. Since the pipeline pressures in the Hugoton Field are maintained at approximately eighty percent of the average field pressure, this fact should be taken into consideration in determining the deliverability factor. Hence, the Commission finds that the formula to be used in fixing well quotas for the Hugoton Field should include the factors of acreage and deliverability. The acreage factor shall be determined as set forth

in paragraph "*g*" of this order. Deliverability shall be deemed to be the ability of said well to produce gas against eighty percent of the average field pressure.

k. The deliverability of each connected well in the Hugoton Field shall be determined as follows: The well shall be produced into the pipe line for approximately seventy-two hours, during which time the working pressure at the wellhead shall be maintained at eighty percent of the average shut-in wellhead pressure of the field, expressed in pounds per square inch gauge and designated herein as the deliverability standard pressure, or as closely thereto as operating conditions in the field will permit. In no case shall the working wellhead pressure be more than ninety percent or less than seventy percent of the shut-in wellhead pressure of the well being tested unless, in the judgment of the Commission's representative, it is impractical to maintain the pressure within the above-described limits. If it is impossible or impractical to reduce the working pressure to ninety percent of the shut-in pressure, the deliverability shall be calculated by substituting ninety percent of the shut-in wellhead pressure of the well for P in the formula hereinafter set forth. Flow shall be measured by approved meter throughout the seventy-two hour test period, and the wellhead pressure shall be measured by dead weight gauge at the close of the test period. The rate at which the well is producing at the end of seventy-two hours shall be considered the stabilized producing rate corresponding to the working wellhead pressure existing at that time, provided such rate is not greater than the average producing rate for the entire seventy-two hour period. If the working wellhead pressure at the close of the test is exactly equal to the deliverability standard pressure, then the corresponding stabilized producing rate,

expressed in M. c. f. per day at a base temperature of sixty degrees Fahrenheit and a base pressure of two pounds above atmosphere, shall constitute the well's deliverability. If the wellhead pressure at the end of the test is either greater than or less than the deliverability standard pressure, the observed stabilized producing rate shall be converted to deliverability by use of the following formula:

$$D = R \times \sqrt{\frac{P^2 - P_d^2}{P^2 - P_w^2}} \quad .85$$

where D = Deliverability.

R = Observed producing rate,

P = Shut-in pressure of the well, pounds absolute.

P_d = Deliverability standard pressure, converted to pounds absolute.

P_w = Working wellhead pressure at Rate R, pounds absolute.

The term "working wellhead pressure," as used in this paragraph, refers to pressure at the casing-head, except in cases where the casing-head is not in open communication with the producing formation because of the presence of a packer or other obstruction in the annular space between casing and tubing. In such cases, the working wellhead pressure shall be calculated by adjusting the tubing pressure for the increased effect of friction caused by flow through the tubing.

Shut-in wellhead pressure shall be measured by dead weight gauge after the well has been shut in for approximately seventy-two hours. In no case shall the well have been shut in for less than sixty-six hours nor more than seventy-eight hours at the time the shut-in pressure is

taken. If the representative of the Commission should for any reason believe that the shut-in pressure taken upon a well is incorrect, he may require that such well be blown to clean fluids from the well bore, or take any such other reasonable steps that may be necessary to get a true pressure upon the well. In the event that more than one shut-in pressure is taken upon a well during the test period, the highest such shut-in pressure obtained will be used in figuring the deliverability of such well.

The deliverability of each unconnected well which is recognized by the Commission as entitled to an allowable shall be estimated from its open-flow considered in connection with the average relationship between open-flow and deliverability for all wells in the field. When such well is connected to a pipe line its deliverability shall be redetermined by the method described herein.[5]

l. To determine a well's quota for a given proration period, determine first the proration factor for the field by dividing the total field allowable for such period by the sum of the products of deliverability times the acreage factors of all the wells in the pool, then multiply the field proration factor by the product of the deliverability times acreage factor for the well. The result reached by this calculation shall constitute the well's allowable, in cubic feet, which it may produce for such proration period.

m. That the production of gas in accordance with the above formula has a reasonable relation to prevention of waste, to the prevention of inequitable and unfair production of gas from the common source of supply, and to the prevention of unreasonable discrimination in favor of one producer in said field and against another producer therein and that production of gas in such manner will in fact

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5 As amended by order dated October 3, 1945.

accomplish the purposes for which article 7, chapter 55, General Statutes of Kansas for 1935 was enacted.

n. That there shall be held two market demand hearings for each year. The first hearing shall cover the period from October 1 to March 31, both inclusive, and the second shall cover the period from April 1 to September 30, both inclusive. The allowable period established shall be a calendar month. The Commission shall issue its orders covering each allowable period, and such orders shall be issued on, or near, the first day of the month for which such order is issued.

o. At such time and place as the Commission shall fix, the Commission will, after notice, conduct a hearing to determine the market demand for natural gas from said field for the next six succeeding proration periods, or for such other period of time as the Commission shall prescribe, and at said hearing may determine any other questions which may properly and legally come before the Commission for consideration thereat, and a new schedule of production allowable for the wells in said field, based upon the determination made as a result of such hearing, shall be prepared and promulgated for the ensuing proration periods.

p. Operators of wells and purchasers, or others taking gas from any well, shall endeavor to limit their takes of gas to the quantities fixed in the schedule as the allowable production for such well, provided that, if, during the period covered by any schedule there should develop a substantial increase in the amount of the market demand for gas from said field, the Director may permit production to be increased ratably from all the wells in the field to meet such emergency increased demand, and the facts respecting same shall be reported to the Commission at or before the next periodic market demand hearing for

such action thereon as may be proper. If, at the end of any proration period, there is an overage or underage in production for any well during such period, same shall be carried forward as a charge against or credit in favor of such well and subtracted from or added to, as the case may be, the allowable for such well for the next proration period. Any well with an overproduction of six times the amount of the current allowable assigned to it for the preceding January shall be shut in by the operator or producer and not permitted to produce any gas until such overproduction has been reduced by deductions from such overproduction made by current allowables, to the extent that the well shall not be overproduced more than five times the current allowable assigned to it for the preceding January. When any connected well has accumulated underproduction in excess of six times the current allowable assigned to it for the preceding January, such excess shall thereupon be cancelled and the amount so cancelled shall be spread among all the connected wells of the field. During the calendar year 1958 all wells over or underproduced shall be brought within four times January sometime during the period from February 1 to July 31, inclusive. During the calendar year 1959 all wells over or underproduced shall be brought within six times January sometime during the period from February 1 to July 31, inclusive. During the calendar year 1960, all wells over or underproduced shall be brought within three times January sometime during the period from February 1 to July 31, inclusive. During the calendar year 1961 and each year thereafter, all wells over or underproduced shall be brought down to zero sometime during the period from February 1 to July 31, inclusive. Any overproduced well which is not brought within the above tolerance sometime during each of the aforesaid periods shall be shut in until its overproduction is reduced to the above tolerances. Any

underproduced well which is not brought within the above tolerance some time during each of the aforesaid periods shall have its accumulated underage in excess of the above tolerances cancelled. (The words "six times January" "four times January" or "three times January" means six, four or three times the allowables assigned to the well for the month of January immediately preceding.) Any underages cancelled shall be spread among all of the connected wells of the field. Any underage so cancelled shall not be considered in the determining of the future production of any such well, unless, upon notice and hearing, the Commission shall otherwise determine: Provided, however, That in no event shall any underproduction of an unconnected well be cancelled.[6]

q. Deliverability tests and seventy-two hour shut-in pressures of the wells in said field should be taken by or under the supervision of the engineer of the Conservation Division of the Commission, with the aid of the owner of the well, such tests to be taken annually on all wells by not later than August 14th of each year. To avoid undue discrimination, deliverability and pressure tests on all wells should be taken at approximately the same time. Prior to the testing of any well, reasonable notice shall be given to owners of off-set wells stating the time at which such test will be commenced. A written report thereof, signed by the persons taking and witnessing the same and approved by the Director or his agent who took or supervised the same, shall be made and filed with the Director of the Conservation Division, forms for which shall be furnished by the Director. The acreage of each well shall be certified in writing by the owner of the well and filed with the Director. If the acreage assigned to any well should be increased or decreased at any time after the initial re-

6. As amended by order dated July 15, 1959

port thereon is made, such fact shall be promptly certified by the owner to the Director. Any operator in the field shall have the right to challenge the correctness of the acreage assigned to any well. As new wells are brought in, their respective deliverability and acreage factors, as well as pressures, shall be taken, reported and certified in like manner.

r. The Director of the Conservation Division shall prepare production schedules, in accordance with the provisions of this order, for the wells in said field and submit the same to the Commission for approval and upon the approval thereof, said schedules will take effect and be promulgated, and the Director shall promptly furnish to each producer and purchaser in said field a copy thereof and a copy of the order of the Commission promulgating the same and they shall govern themselves accordingly in the subsequent operation of said wells.

s. All wells shall be equipped with meters of an approved type and the amount of gas produced from each well shall be accurately measured: *Provided*, That where more than one well is situated on a lease, a meter for each well is not required if, upon application and proper showing, the Commission finds that all the gas produced from the wells may be accurately measured so as to determine whether production is ratable and without unreasonable discrimination.

t. To avoid the drilling of unnecessary wells and to prevent waste, no well hereafter drilled in said common source of supply shall be assigned an allowable unless the Commission after due notice and hearing, shall find that under all the circumstances appearing, undue or uncompensated drainage of gas is occurring beneath the tract on which such well is located or that there is an actual need

for additional wells to furnish gas to fulfill the market demands for gas from said field.

u. That this order should constitute the Basic Order for the proration of production in said field on and after March 31, 1944, and until amended, changed, or modified by further order of the Commission.

It Is, Therefore, by the Commission Ordered: That the Basic Order heretofore entered herein dated October 24, 1942, be and the same is hereby rescinded; that this order shall constitute and is hereby designated as the Basic Order for the proration of production of gas from the Hugoton Gas Field; that the production of natural gas from said field be, and the same is hereby regulated and restricted in conformance with the findings hereinabove made and in compliance with the formula, rules, regulations and other matters therein contained.

It Is Further Ordered: That this order shall take effect and be in force from and after the 31st day of March, 1944, and shall remain in force and effect until amended, changed or modified by the further order of the Commission.

It Is Further Ordered: That the Commission hereby retains continuing jurisdiction of the subject matter hereof and of the parties hereto for the purpose of issuing from time to time such further order, amendments, additional orders, rules and regulations as may be necessary and proper in the premises.

By the Commission It Is Ordered.

(Seal)

Pursuant to Paragraph (n) of such Basic Proration Order, two market demand hearings for each year were and are held by such Commission and market demand

orders are issued for sixth-month periods (October 1 to March 31, and April 1 to September 30), in addition to which monthly proration or allowable orders are issued for each month spreading and allocating the market demand and fixing the monthly allowables assigned to each of the producing gas wells in said field.

That under date of May 27, 1959, said Commission issued a Show Cause Order against Northern Natural Gas Company, which order was as follows:

APPENDIX "R"

Exhibit No. 6
Witness Wilkonson

Volumes of Underage Cancelled in The Kansas Hugoton Field by Purchaser From May, 1956, Through October, 1963
(MCF O 14.65 P.S.I.A.)

Year	Month	Cities Service	Colorado Interstate	Kansas Colorado	Kansas Nebraska	Northern Natural	Panhandle Eastern	Anadarko	Shallow Water	Reserve Pipeline
1956	May	7 320	142			2 536		605	4 928	
	June	6 070				2 228		563	886	
	July	4 547				1 662		420	4 80[illegible]	
	August	3 683	459			1 346		340	384	
	September	5 120	2 19[illegible]		43			473	2 417	
	October	5 910	4 900					528	3 827	
	November		3 180					608	3 511	
	December		1 514					673	4 602	
1957	January	2 155	1 689					746	4 876	
	February	68 262	33 366	13 232	60 694			1 599	14 250	
	March	20 268	4 635		4 446		.75	709	5 808	
	April	17 585	5 751		4 878		89	720	4 942	
	May	10 034	6 320	180	7 037	2 934		646	2 988	
	June	20 737	5 390	233	4 518	2 963	3 707	522	4 095	
	July	5 153	3 941			1 587	31	419	1 584	
	August	1 213	2 711	363	1 177	2 737	52	418	842	
	September	12 016	3 933	179	384		52		2 054	
	October	701	1 762	184	90	6 635	58		1 367	
	November	6 074	1 977	233	402		57		3 524	
	December	29 152	2 048	292	3 574	7 394	92	743	5 392	
1958	January	9 924	3 932	328	29 132	18 822	103	833	4 390	
	February	64 384	36 716	2 550	99 105	40 565	40	310		
	March	2 120	5 448	292	6 968	175	92	742	3 057	
	April	1 375	5 896	284	8 007	170	89	721	3 476	
	May	9 937	4 371	214	2 614	128	67	544	2 321	
	June	8 605	2 543	205	2 330	2 596	64	520	2 240	
	July	5 165	2 490	171	875	4 877		435	732	
	August	299 552	56 523	2 192	235 479	143 983		5 583	64 301	
	September	6 417	962			5 023				
	October	17 996	514			9 840				
	November	81 453	74			30 027				
	December	32 089	199			115 696				
1959	January	25 027	453		1 845	565 557				
	February	45 881	5 542		12 878	533 104	27 148			
	March	11 593	416		1 878	959 485	259			
	April	7 302	380	80	2 418	1 497 622	477	209		
	May	11 949	367	262	1 831	3 213 314	1 115	667		
	June	16 352	330	236	689	5 982 000	904	599		
	July	9 964	392	193	1 144	5 291 206		491		
	August	14 002	273	195	1 742	4 764 537	239	496		
	September	23 286	765	233	3 046	5 186 869		592		
	October	1 315	2 455		788	4 087 820		2 409		
	November		3 147		623	1 528 098				
	December	7 516	1 782		2 741	2 651 160				
1960	January	25 840	2 356		2 094	3 238 262				
	February	221 508	25 845		25 638	573 011	7 479	5 364	14 349	
	March	92 066	2 055		2 535	283 680				
	April	239 433	2 229		4 318	534 518				
	May	229 767	2 041		2 120	227 054	179			

	March	11 593	416		1 878	959 485	259			
	April	7 302	380	80	2 418	1 497 622	477	209		
	May	11 949	367	262	1 831	3 213 314	1 115	66		
	June	16 352	330	236	689	5 982 000	904	59		
	July	9 964	392	193	1 144	5 291 206		491		
	August	14 002	273	195	1 742	4 764 537	239	496		
	September	23 286	765	233	3 046	5 186 860		592		
	October	1 315	2 455		788	4 087 820		2 409		
	November		3 147		623	1 528 098				
	December	7 516	1 782		2 741	2 651 160				
1960	January	25 840	2 356		2 094	3 238 262				
	February	221 508	25 845		25 638	573 011	7 479	5 364	14 349	
	March	92 066	2 055		2 535	283 680				
	April	239 433	2 229		4 318	534 518				
	May	238 767	2 091		3 120	227 954	173			
	June	49 794	329		628	149 533				
	July	33 008	904		299	159 125				
	August	9 647	1 181			625 589				
	September	12 738	1 721			1 017 678				
	October	15 559	1 011		622	382 423		2 145		
	November	60 631	1 315		3 728	283 252				
	December	116 478	2 841		5 287	1 748 213				
1961	January	220 987	3 322		7 665	2 109 964				
	February	503 989	13 135		50 805	7 518 664	125			
	March	94 226	2 234		5 590	1 690 069		1 687		
	April	99 914	2 130		7 565	2 301 822		3 024		
	May	58 949	3 479		8 062	1 562 174	7	2 733		
	June	74 717	1 858		4 091	668 424		3 384		
	July	9 771	2 278		4 273	686 989				
	August	276	2 064		3 581	796 218				
	September	8 972	2 943		41 909	853 100				
	October	25 282	281		1 728	726 536				
	November	426	460		1 807	587 988				
	December	534	2 977		3 162	374 303				
1962	January	6 753	5 974		6 996	239 097				
	February	313 488	29 120	5 484	188 422	3 553 790	100 409			
	March	64 773	3 030		34 983	281 129	456			
	April	73 196	2 861		16 625	304 467	14 549			
	May	23 108	1 075		22 981	116 178	392			
	June	16 413	1 716		47 892	45 739				
	July	42 530	834		16 628	23 335				
	August	27 146	2 355		3 631	12 489				
	September	6 962	3 678		112 663	13 317				
	October	19 605	3 292		2 003	5 401				
	November	30 204	1 902		4 543	16 226				
	December	40 729	2 299	9 489	10 644	18 019				
1963	January	26 738	4 591	11 453	5 105	19 241				
	February	789 257	34 408	71 500	147 438	608 723	171 399			7
	March	94 215	5 497	2 922	16 173	79 563	85 238			1
	April	100 071	7 829	198	27 734	32 208	97 544			
	May	37 324	6 821		3 905	40 934	52 176			
	June	79 742	16 821	21	4 707	17 332	20 148			
	July	307 526	29 496	774	3 778	14 455	609			3
	August	226 061	24 212	449	2 171	11 509	5 981			1
	September	89 595	20 703		2 589	17 195	2 342			6
	October	53 628	508		2 102	1 311				
Total for Period		5 621 780	511 946	124 621	1 375 506	71 205 834	593 837	44 310	171 949	21

Note: Cities Service Includes Ashland & United Carbon; Anadarko Includes Quinque.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1964

No. 83

NORTHERN NATURAL GAS COMPANY, a Corporation, and CITIES SERVICE GAS COMPANY, a Corporation,
Appellants,

vs.

THE STATE CORPORATION COMMISSION OF THE STATE OF KANSAS, SOUTHWEST KANSAS ROYALTY OWNERS ASSOCIATION, AND PANHANDLE EASTERN PIPE LINE COMPANY,
Appellees.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF KANSAS

MOTION TO DISMISS

WENDELL J. DOGGETT,*
JEFF A. ROBERTSON,
CHAS. VANCE,
C. C. LINLEY,
G. R. REDDING,
THOMAS M. LOFTON,
Post Office Box 1348,
Kansas City, Missouri 64141,
Attorneys for Panhandle Eastern Pipe Line Company.

BAKER & DANIELS,
810 Fletcher Trust Building,
Indianapolis, Indiana,
Of Counsel.

*Attorney upon whom service should be made.

R. L. Mimeographing, Inc., 1100 Oak Street, Kansas City, Mo. 64106, HArrison 1-3080

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IN THE

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Appellants,

vs.

THE STATE CORPORATION COMMISSION OF THE STATE OF KANSAS, SOUTHWEST KANSAS ROYALTY OWNERS ASSOCIATION, AND PANHANDLE EASTERN PIPE LINE COMPANY,
Appellees.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF KANSAS

MOTION TO DISMISS

Pursuant to Rule 16 of the Revised Rules of the Supreme Court of the United States, Panhandle Eastern Pipe Line Company, appellee, moves to dismiss these appeals from judgments of the Supreme Court of the State of Kansas on the grounds that such judgments rest on adequate nonfederal bases, that the alleged federal question was not properly raised and that no substantial federal question is presented.

OPINIONS BELOW

The opinions of the Supreme Court of the State of Kansas are reported at 192 Kan. 2, 386 P.2d 266 (Jurisdictional Statement A1) and 192 Kan. 29, 386 P.2d 288 (Jurisdictional Statement A75).

JURISDICTION

Appellants attempt to invoke the jurisdiction of the the Supreme Court of the United States under 28 U.S.C., § 1257 (2).

QUESTIONS PRESENTED

Whether the judgments of the Supreme Court of the State of Kansas rest on adequate nonfederal bases, whether any federal question was properly raised and whether the State Corporation Commission of the State of Kansas or private pipe line companies shall fix the amount of natural gas to be produced from the Kansas Hugoton gas field.

STATEMENT

This case concerns orders entered by the State Corporation Commission of the State of Kansas.[1] In 1956, the Kansas Commission began hearings to reconsider the method by which it calculated the amount of natural gas

1. Cases related to this proceeding and on appeal to this Court are No. 75, *Colorado Interstate Gas Company* v. *The State Corporation Commission of the State of Kansas et al.*, and No. 140, *Kansas-Nebraska Natural Gas Company, Inc.*, v. *The State Corporation Commission of the State of Kansas et al.*

that could be produced from wells located in that part of the Hugoton gas field situated in the State of Kansas. Prior to that time, the Kansas Commission had, after hearings and in the manner described below, fixed the amount of gas to be produced from the Kansas Hugoton field on the basis of monthly estimates submitted by the pipe line companies purchasing gas from that field. Each month the Kansas Commission accepted without question the pipe line companies' estimates, adding to the total estimates the amount of gas, if any, taken in the prior month in excess of the amount fixed by the Commission for that month and subtracting the amount, if any, which under the Commission's order for the prior month any company or companies could have taken but failed to take. Thus, the amounts of gas actually taken by the companies controlled the Kansas Commission's determinations (Jurisdictional Statement A10-A12, A32-A33). The Kansas Supreme Court held that the practice of subtracting amounts of gas not taken was unauthorized under both the applicable Kansas Statute and the Kansas Commission's own orders (*id.* at A31-A34).

Beginning in May, 1956, the Kansas Commission employed several variations in its procedure, finally adopting a method based largely upon the total of the pipe line companies' estimates. The most significant change in the Kansas Commission's procedure was that the amount of gas not taken under the prior month's determination was no longer subtracted from the amount determined by the Commission to be necessary to satisfy the market demand for gas for the current month. This has made available to the pipe line companies additional quantities of gas, and the appellants contend that this is unlawful.

Three types of orders issued by the Kansas Commission are involved in this appeal: (1) monthly orders for

each month during the periods from May, 1956, through November, 1957, from October, 1958, through January, 1959, and from October, 1959, through March, 1960, fixing the amount of gas available to be produced in each of those months; (2) semi-annual orders determining the market demand for gas from the Kansas Hugoton field for the six months' periods from October, 1958, through March, 1959, and from October, 1959, through March, 1960; and (3) a general order effective February 1, 1958, specifying the method by which the Kansas Commission proposed to determine the amount of gas to be produced by each well in the field. Ultimately, these orders were reviewed by the Supreme Court of the State of Kansas in seven separate cases and disposed of in two opinions. No other orders are involved in these appeals.

1. **Proceedings Arising in the District Court of Finney County, Kansas.**

Appellant, Northern Natural Gas Company ("Northern"), petitioned the District Court of Finney County, Kansas, for judicial review of the above described orders and no other orders. In each instance in which Northern petitioned for judicial review, this appellee, Panhandle Eastern Pipe Line Company ("Panhandle"), and the appellee Southwest Kansas Royalty Owners Association ("Royalty Owners") intervened.

(a) Kansas Supreme Court Cases 41,516 and 41,556. The Finney County District Court entered judgment setting aside the Kansas Commission's general order effective February 1, 1958, and setting aside all of the Commission's monthly orders covering the period from May, 1956, through November, 1957, insofar as they permitted production of gas in excess of that which would have been permitted under the Commission's previous practice. (Juris-

dictional Statement A44-A46). Appeals were taken from such judgment by Panhandle, the Kansas Commission and the Royalty Owners, all being docketed by the Kansas Supreme Court as Case 41,516. Appellant Cities Service Gas Company ("Cities") was not at any time a party to Case 41,516.

Subsequently, the Finney County District Court entered judgment setting aside to the same extent the Kansas Commission's monthly orders covering the period from October, 1958, through January, 1959, and the semiannual order estimating market demand for the period from October, 1958, through March, 1959 (Jurisdictional Statement A46-A48).. Appeals also were taken from such judgments by Panhandle, the Commission and the Royalty Owners, all being docketed by the Kansas Supreme Court as Case 41,556. Cities was not at any time a party to Case 41,556.

Case 41,515 and 41,555, to which neither Northern nor Cities is a party, involve proceedings initiated by Colorado Interstate Gas Company for judicial review of all the orders challenged by Northern and Cities and certain orders not challenged by them. Colorado Interstate has also taken an appeal to this Court. See No. 75, October Term, 1964.

Cases 41,516 and 41,556, together with Cases 41,515 and 41,555, were disposed of by the Kansas Supreme Court in a single opinion appearing at 192 Kan. 2, 386 P.2d 266 (Jurisdictional Statement A1). Included among the reasons given for reversing the judgments of the Finney County District Court are the following nonfederal grounds:

First, no timely applications for rehearing were filed with the Kansas Commission respecting the orders issued

prior to November 1957 (*id.* at A14-A18). Under the procedure prescribed by Section 55-606 of the Kansas General Statutes (G.S. 1949, 55-606), a timely petition for rehearing filed with the Commission is prerequisite to judicial review.

Second, the Kansas Commission's general order (effective February 1, 1958), describing the procedure which the Commission proposed to follow in the calculation of the amount of gas which may be produced by wells in the Kansas Hugoton field, was construed by the Kansas Supreme Court to have only prospective application. Judicial review is unavailable until the Commission implements the general order (Jurisdictional Statement A18-A19).

Third, when the Finney County District Court set aside the Kansas Commission's monthly orders from May, 1956, through January, 1959, it exceeded its statutory authority and erroneously substituted its determinations for those of the Commission (*id.* at A20-A23). References to the trial court's erroneous judgments and the orders involved in these appeals and affected by such judgments are as follows:

Orders Covering the Period	Judgments
May, 1956, through November, 1957, and General Order effective February 1, 1958	Jurisdictional Statement A44-A46
October, 1958, through January, 1959	Jurisdictional Statement A46-A48

The trial court's error on this point had a more widespread effect, in terms of the number of orders involved, than any of the trial court's other reversible errors.

Fourth, the Finney County District Court disregarded its statutory duty to make findings of fact and conclusions of law when requested to do so by Panhandle (Jurisdictional Statement A23-A25).

Fifth, as discussed in detail in its opinion reported in 192 Kan. 29, 386 P.2d. 288 (Jurisdictional Statement A75), the Kansas Supreme Court held that the Finney County District Court lacked jurisdiction to review the semiannual market demand order for October, 1958, through March, 1959, and monthly orders for October, 1958, through January, 1959, because petitions for judicial review of the same orders had been filed earlier in the District Court of Stevens County, Kansas (Appendix A). Proceedings in the Stevens County District Court to review these orders have been continued pending disposition of the instant appeals (Appendix B).

(b) Kansas Supreme Court Cases 42,175, 42,176, 42,185 and 42,230 (Consolidated). The Finney County District Court entered judgment affirming the Kansas Commission's semiannual market demand order for October, 1959, through March, 1960, and affirming in part and reversing in part the orders for each month during that period (Jurisdictional Statement A90-A94). Appeals were taken from such judgment and consolidated with other similar appeals, all such appeals being docketed by the Kansas Supreme Court as Cases 42,175, 42,176, 42,185 and 42,230 (Consolidated). These cases were disposed of by the Kansas Supreme Court in the opinion appearing at 192 Kan. 29, 386 P.2d 288 (Jurisdictional Statement A75), on the nonfederal ground that exclusive jurisdiction to review the Commission's October, 1959, through March, 1960, orders was vested in the Stevens County District Court, petitions for judicial review having been filed there earlier than in the Finney County District Court

2. **Proceedings Arising in the District Court of Stevens County, Kansas.** The Royalty Owners and Panhandle petitioned the Stevens County District Court for judicial review of the Kansas Commission's orders described in the preceding paragraph (b). All such petitions were consolidated, and in accordance with accepted practice, the Stevens County District Court set the consolidated petitions for trial on February 13, 1960 (Appendix C). By court order dated February 6, 1960, both Northern and Cities were directed to proceed in the Stevens County District Court, presenting to it their grievances respecting the Kansas Commission's orders (Appendix D). Both Northern and Cities refused.

Trial of the petitions was held as scheduled on February 13, 1960 (Appendix E). Neither Northern nor Cities appeared or participated in the trial, and there were no requests for continuance. In regular course the Stevens County District Court on March 10, 1960, entered judgment, affirming the Kansas Commission's orders (*ibid.*).

Northern on March 13, 1960, appeared specially before the Stevens County District Court and moved to vacate that court's judgment on grounds which raise no federal question (Appendix F). At a hearing held March 19, 1960, on Northern's motions to vacate the court's judgment the following colloquy occurred between Mr. Adams, attorney for Northern; and the Stevens County District Court:

> "Mr. Adams: There is one other distinction between the cases that were filed here by Panhandle and the cases we were talking about in the Finney County District Court. *All of these cases before your Honor, all they want is more gas. That is the only ground for the judicial review. They want more gas than the Commission allowed them. Now there is an entirely different issue in the cases in the District Court*

of Finney County, Kansas. Those issues have never been before Your Honor. That is that as the Commission has interpreted the amendment to Section 55-703 of the Statute, the Statute is unconstitutional. That issue is not in these judicial review proceedings or actions that are here before the Court.

"The Court: I don't think my order has ruled on the constitutionality of the statute because the constitutionality of the statute was not urged before me and consequently my ruling does not include that phase of it. It was under the statute that my rulings have been made.

"Mr. Adams: Assuming the statute to be valid.

"The Court: It was not before me as to whether it was valid or not valid, so I haven't determined that one way or the other as I see it. In other words, the proceedings that was had before me was urged on the theory, I suppose, that it was valid. Anyway, I took it from there, I have not ruled, I had no briefs, and I haven't even had it contested before me as to the constitutionality of the statute, which I heard that Judge Tate had but I have not. (Trial Court Tr. 33-34).

"The Court: My theory being that * * * since this statute was effective * * * (this is) a different series of cases and that (since) Southwest Kansas Royalty Owners' Association was in first, * * * I had jurisdiction. Now, it's all based on that. Now, if you are right on these other points, if you are right on the point that they have no legal entity to perfect this appeal, then I am wrong all the way down, but if you are wrong on that, I am convinced that I have jurisdiction all the way through. (Trial Court Tr. 35, 36)." (No. 42,038, Abstract of the Record of Appellants Cities Service Gas Company and Northern Natural Gas Company 286-287.) (Emphasis supplied.)

As specifically conceded by Northern's attorney, the only ground for judicial review in the Stevens County District Court was whether the Kansas Commission had allowed

the petitioners (Panhandle and the Royalty Owners) sufficient gas. The issue of the constitutionality of the Kansas statutes, as interpreted by the Kansas Commission, was not before the Stevens County District Court and played no part in its judgment.

The Stevens County District Court overruled Northern's motions to vacate its judgment (Appendix G). Cities filed no such motions. Appeals were taken from the judgment of the Stevens County District Court to the Kansas Supreme Court, all such appeals being docketed there as Case 42,038.

At no time did either Northern or Cities intervene in the judicial review proceedings before the Stevens County District Court; to the contrary, they refused to submit to that court's jurisdiction, which the Kansas Supreme Court held was exclusive. Nevertheless, both Cities and Northern filed Notices of Appeal from a judgment entered in a proceeding to which they never were a party, attempting to raise a federal issue which Northern advised the Stevens County District Court was not before it for adjudication. With the proceedings in Case 42,038 in this posture, appeals from the Stevens County District Court failed to present to the Kansas Supreme Court the federal question which Northern and Cities urge upon the Supreme Court of the United States.

In summary, in proceedings before the Kansas Supreme Court, review of which is sought here, Northern was a party to Cases 41,516 and 41,556 and Cases 42,175, 42,176, 42,185 and 42,230 (Consolidated). Northern was not a party either to Cases 41,515 and 41,555, or to Case 42,038, although in the last case Northern attempted to appeal to the Kansas Supreme Court.

Cities, on the other hand, was a party to Cases 42,175, 42,176, 42,185 and 42,230) (Consolidated), each arising from a trial court that lacked jurisdiction. Cities was not a party either to Cases 41,515, 41,516, 41,555 and 41,556 or to Case 42,038, although it, too, attempted to appeal the last case to the Kansas Supreme Court.

In each of the cases to which Northern and Cities were parties or from which they attempted to appeal the judgment of the Kansas Supreme Court is based upon a nonfederal ground adequate in itself to sustain the disposition made by that court.

ARGUMENT

The Judgments of the Kansas Supreme Court Rest upon Adequate Nonfederal Grounds, and No Federal Question Was Properly Raised

This Court has repeatedly held that it lacks jurisdiction to review a state court's decision based upon an independent state ground sufficient to support its judgment. A case such as this, as this Court has previously stated, "is controlled by the settled rule that where the judgment of a state court rests upon two grounds, one of which is federal and the other nonfederal in character, our jurisdiction fails if the nonfederal ground is independent of the federal ground and adequate to support the judgment." *Fox Film Corp. v. Muller*, 296 U.S. 207, 210 (1935). Decisions acknowledging this rule, in addition to those cited in the *Mulier* case, include:

Cramp v. *Board of Public Instruction of Orange County, Florida*, 368 U.S. 278, 281 (1961).

Black v. *Cutter Laboratories*, 351 U.S. 292 (1956).

Stembridge v. *State of Georgia*, 343 U.S. 541 (1952).

Radio Station WOW, Inc. v. *Johnson*, 326 U.S. 120, 129 (1945).

Holley v. *Lawrence*, 317 U.S. 518 (1943).

Moreover, this Court declines to assume jurisdiction over an appeal from the judgment of a state court where it does not appear upon which of two grounds, one federal and one nonfederal, the judgment rests. *Lynch* v. *People of New York ex rel. Pierson*, 293 U.S. 52 (1934).

Northern seeks review by this Court of a judgment entered by the Kansas Supreme Court in four cases (Cases 41,515, 41,516, 41,555 and 41,556). It was a party to only two of such cases (Cases 41,516 and 41,556), each of which was decided by the Kansas Supreme Court on manifestly nonfederal grounds:

Kansas Supreme Court Case 41,516.

1. Failure to file timely petitions for rehearing with the Kansas Commission as required by state law.

2. The Kansas Commission's general order operates prospectively and is not subject to judicial review by Kansas courts until implemented by the Commission.

3. The trial court (District Court of Finney County, Kansas) substituted its judgment for that of the Kansas Commission, contrary to the statutory authority granted to such court.

4. The trial court failed to discharge its statutory duty to make findings of fact and conclusions of law when requested to do so by a party.

Kansas Supreme Court Case 41,556.

1. The trial court (District Court of Finney County, Kansas) lacked jurisdiction to review the Kansas Commission's orders covered by Case 41,556

because petitions for judicial review of such orders were filed first in the District Court of Stevens County, Kansas.

2. The trial court substituted its judgment for that of the Kansas Commission, contrary to the statutory authority granted to such court.

3. The trial court failed to discharge its statutory duty to make findings of fact and conclusions of law when requested to do so by a party.

Under the law of the State of Kansas, the orders of the Commission are presumed to be valid.[2] They remain in force until set aside by a district court in the manner provided by statute. As indicated by the Kansas Supreme Court in the present case, a Kansas district court has no authority to review the Kansas Commission's orders except to the extent permitted by statute (Jurisdictional Statement A22). The Finney County District Court not only exceeded its statutory authority, erroneously substituting its judgment for that of the Commission, it also failed to discharge its statutorily imposed duty to make findings of fact and conclusions of law. Therefore, because the Finney County District Court departed from the procedures for judicial review established by Kansas statutes, its judgment was reversed. As a consequence, the Kansas Commission's orders remain in effect. Precisely the same errors committed by the Finney County District Court in the present case were committed by the trial court in *Cities of McPherson* v. *State Corporation Commission*, 174 Kan. 407, 257 P.2d 123 (1953). The Kansas Supreme Court, noting the similarity of the statutory judicial review provisions involved in both cases (Jurisdictional Statement A22),

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2. *Bennett* v. *State Corporation Commission*, 157 Kan. 589, 142 P.2d 810, 815 (1943).

terminated the litigation in each of them by reversal of the trial courts' judgments.

In addition, Northern requests this Court to review a judgment entered by the Kansas Supreme Court in four cases (Cases 42,175, 42,176, 42,185 and 42,230 (Consolidated)). These cases were disposed of by the Kansas Supreme Court on the unmistakably nonfederal ground that the trial court (District Court of Finney County, Kansas) lacked jurisdiction.

Northern further urges this Court to review the judgment entered by the Kansas Supreme Court in Case 42,038, but Northern refused to submit to the jurisdiction of the trial court from which that proceeding arose (District Court of Stevens County, Kansas), never intervened in that proceeding, and represented to that court that the only issue before it was Panhandle's request for additional quantities of gas, conceding that the question of the constitutionality of the applicable Kansas statute, as interpreted by the Kansas Commission, was raised only in the Finney County District Court. In light of these circumstances, the Kansas Supreme Court disposed of Northern's contentions with the determination that the Finney County District Court lacked jurisdiction. Apart from the obvious fact that Northern had never been a party to the proceeding in the court which did have jurisdiction (Stevens County District Court), its attempted appeal was from denial of a motion to vacate that court's judgment, which had been entered after a trial in which Northern had refused to participate. Northern also failed to raise any federal question in its motion to vacate.

Cities appeals from the judgment of the Kansas Supreme Court in Cases 42,175, 42,176, 42,185 and 42,230 (Consolidated). As previously stated, the Kansas Su-

preme Court held that the trial court in such cases (Finney County District Court) lacked jurisdiction over the Kansas Commission's orders, which are the subject of those appeals.

Cities also asks review of the Kansas Supreme Court's judgment in Case 42,038, although Cities, like Northern, refused to submit to the jurisdiction of the trial court (Stevens County District Court) and never intervened in the proceedings in that court. Unlike Northern, Cities at no time moved to vacate the trial court's judgment, a tactic which Northern did belatedly attempt.

SUMMARY

Northern Natural Gas Company

Kansas Supreme Court Case		Reason for Dismissal of These Appeals
41,515		Northern not a party
41,516		Trial court's judgment reversed on nonfederal grounds.
41,555		Northern not a party
41,556		Trial court's judgment reversed on nonfederal grounds.
42,175)		Trial court's judgment reversed on nonfederal grounds
42,176)	Consolidated	
42,185)		
42,230)		
42,038		Northern not a party and federal question not properly raised.

Cities Service Gas Company

Kansas Supreme Court Case	Reason for Dismissal of These Appeals
41,515	Cities not a party.
41,516	Cities not a party.
41,555	Cities not a party.
41,556	Cities not a party.
42,175)	Trial court's judgment re-
42,176) Consolidated	versed on nonfederal grounds.
42,185)	
42,230)	
42038	Cities not a party and federal question not properly raised.

The State Corporation Commission of the State of Kansas, Not Private Pipe Line Companies, Should Determine the Amount of Natural Gas Which May Be Produced from the Kansas Hugoton Gas Field

The merits of these appeals present only the nonfederal question of whether a majority of the pipe-line companies or the Kansas Commission may control the amount of gas which lawfully may be produced from the Kansas Hugoton gas field. Procedural deficiencies previously discussed are dispositive of these appeals. Nevertheless, to dispel any impression that Northern and Cities may be deprived of the opportunity to assert a meritorious case only because of procedural deficiencies, we desire to focus attention upon the issue on the merits and rescue it from the distortion to which it has been subjected by them in their attempt to convert a purely local question into a federal-state conflict.

The litigation in its entirety involves the validity of producing allowables, i.e., the amount of gas which individual wells are permitted to produce in a given period of time. It would be difficult to conceive of something more squarely within the function of production, which, under the "production and gathering" exclusion of the Natural Gas Act, is reserved for regulation by the states (15 U.S.C. § 717(b), Jurisdictional Statement 34).

Apart from this rather obvious disposition of Northern's and Cities' basic contention that the jurisdiction of the Federal Power Commission has been invaded, we call attention to the fact that the true issue raised by them is not whether the Kansas Commission or the Federal Power Commission is the agency empowered to set gas well allowables, but whether the Kansas Commission or the pipe line companies should have actual control of the allowables.

There were three sides to this litigation in the state court. The appellants attacked the Kansas Commission's orders, contending that the Commission was required to deduct underages from, and add overages to, the amount required to satisfy market demand.[3] This has been characterized as the historic method of computing allowables. If this was done the market demand determination had no ultimate effect on allowables because past runs controlled current allowables. Panhandle and the Royalty Owners attacked the orders on the grounds that the actual market demand, as shown by the evidence, vastly exceeded the

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3. Underages are amounts of gas which could have been produced under prior orders of the Commission, but were not taken by the pipe line companies. Overages are amounts of gas which the pipe line companies have taken in excess of quantities authorized by prior orders of the Commission.

nominations (estimates of amounts of gas to be purchased) filed by the pipe line companies and that the Commission had no right to let a majority in interest of the pipe line companies determine allowables, either by actual purchases (as was the case if underages were subtracted and overages added each month) or by nominations. The Commission defended its orders but objected to having to defend the same order in more than one court.

The Commission sometimes accepted the nominations as the market demand and sometimes increased them in inconsequential amounts, but no longer deducted underages or added overages for the previous month. The District Court of Finney County in the early cases (Nos. 41,515, 41,516, 41,555 and 41,556) rendered a judgment setting aside the allowables in so far as they exceeded what they would have been if the Commission had followed the historic method.

The second group of cases (Nos. 42,175, 42,176, 42,185 and 42,230 (Consolidated) and 42,038) involved the same issues but arose under an amended Kansas statute. In these cases the Stevens County District Court found that the Commission was not authorized or required to follow the historic method, and the Finney County District Court, in effect, changed its mind and reached the same conclusion. Both courts rejected Panhandle's and the Royalty Owners' contentions that the evidence required a market demand determination substantially in excess of the nominations.

Apart from its conclusions on the procedural questions previously discussed, the Kansas Supreme Court held: (1) The Commission was neither authorized nor required to follow the historic method of deducting underages; (2) Market demand is a question of fact to be determined by

the Commission from all of the available evidence, and, although the Commission's market demand determination barely exceeded the total of the nominations, Panhandle and the Royalty Owners had failed to establish that the determination was arbitrary or unreasonable. This second holding is not before this Court because Panhandle and the Royalty Owners have not appealed. Panhandle's decision in this respect is the product of a practical realization that it is more important that the litigation be terminated than that the allowables for seven years be recalculated on the basis of the full market demand. The first holding is all that is left in the case. Certainly, the question of whether the Kansas Statute directs or permits the Kansas Commission to deduct underages is a question of Kansas law.

In a companion case (No. 140), the appellant, Kansas-Nebraska Natural Gas Company, Inc., has been candid enough to acknowledge that "At this point in time, the power of the State of Kansas to regulate by limiting the production of natural gas from common sources of supply within the state in order to prevent waste of a valuable resource and to protect the correlative rights of owners of interests in such production is no longer questioned. (*Bandini Petroleum Co.* v. *California Superior Ct.*, (1931) 284 U.S. 8, 76 L. Ed. 136, 52 S. Ct. 103)." (No. 140, Jurisdictional Statement 26).

In none of the related appeals (Nos. 75, 83 and 140) do the appellants complain of the setting of allowables by the Kansas Commission—providing that the Commission establishes allowables according to the so-called historic method. In fact, this is the totality of the complaint, that the Commission departed from the historic method. Reduced to fundamentals, this method was a procedure

whereby the Kansas Commission was limited to performing the mechanical function of a calculating machine, using data furnished by the pipe line companies. Thus the pipe line companies—not the Kansas Commission—controlled allowables by (1) their estimates and (2) the quantities of gas actually taken.

Northern and Cities attempt to make this case fit the mold of *Northern Natural Gas Co.* v. *State Corporation Commission of Kansas*, 372 U.S. 84 (1963). Obviously it will not conform, for this Court based that decision squarely on the fact that the order was directed to the pipe line purchaser, saying:

> "The danger of interference with the federal regulatory scheme arises because these orders are *unmistakably and unambiguously directed at purchasers* who take gas in Kansas for resale after transportation in interstate commerce. In effect, these orders shift to the shoulders of interstate purchasers the burden of performing the complex task of balancing the output of thousands of natural gas wells within the State, cf. *Miller Bros. Co.* v. *Maryland*, 347 U.S. 340—*a task which would otherwise presumably be the State Commission's*." (372 U.S. at 92; emphasis supplied.)

Here the Kansas Commission has undertaken that task and has directed its orders to producers, not purchasers for resale after transportation in interstate commerce. Of course, these orders may have some residual effect on interstate pipe line companies, as would any other conservation order or safety regulation directed to the producer. This, however, does not destroy the essentially local character of these conservation acts of the Kansas Commission.

Although in some cases the market demand determined by the Commission after it abandoned the historic method

was in excess of the pipe line companies' estimates, this was not burdensome to Northern or Cities. Allowables do not compel the taking of any gas, rather they are permissive and authorize equitable production from each well in a common source of supply. Both Northern and Cities concede that all underages canceled during times pertinent to these appeals have been, or upon application by the party concerned will be, reinstated (Jurisdictional Statement 29, n. 33). They further admit that the Kansas Commission has placed a moratorium upon cancellation of underages (*ibid.*). The fact is that neither Northern nor Cities has been hurt by the allowables approved by the Kansas Supreme Court.

Moreover, as expressly observed by the Kansas Supreme Court (Jurisdictional Statement A34), the Kansas Commission's prior practice of adding canceled underages to the market demand for gas was not questioned in the Kansas courts. Until added to the market demand, gas constituting the canceled underage simply remains in the ground. Under the existing practice no one is deprived of anything. It follows that review of the Kansas Commission's orders by this Court would be inappropriate until the only practice which could conceivably produce injury has been put into effect and has been properly challenged in the Kansas courts.

Though Northern and Cities have tortured the issue in an attempt to make it fit the form of a federal question, the case stripped bare is nothing more than a question of whether a majority of the pipe line companies may control allowables to suit their private purposes or whether the Kansas Commission may set allowables based upon reasonable evidence. The Kansas Commission has not compelled Northern or Cities to take unwanted gas; nor has it

deprived them of an opportunity, equal to that accorded every other purchaser, to take gas from the Kansas Hugoton field. All that the Kansas Commission has done is increase the amount of gas which may be produced.

CONCLUSION

Panhandle Eastern Pipe Line Company, appellee, submits that these appeals should be dismissed because the judgments of the Kansas Supreme Court rest on adequate nonfederal grounds, because no federal question was properly raised and because no substantial federal question is presented

Respectfully submitted,

WENDELL J. DOGGETT
JEFF A. ROBERTSON
CHAS. VANCE
C. C. LINLEY
G. R. REDDING
THOMAS M. LOFTON

BAKER & DANIELS
810 Fletcher Trust Building
Indianapolis, Indiana
Of Counsel

August, 1964

APPENDIX A

NORTHERN NATURAL GAS COMPANY et al.

v.

STATE CORPORATION COMMISSION OF THE STATE OF KANSAS et al.

The following summaries appear in Panhandle Eastern Pipe Line Company's Abstract of the Record in Kansas Supreme Court Cases Nos. 41,555 and 41,556, which Abstract is part of the record in these appeals. Bracketed references are to pages in such Abstract. The Kansas Commission's order referred to in the first and third summaries appears in such Abstract at pages 83-87, and the Kansas Commission's order referred to in the second summary appears in such Abstract at pages 100-101.

Petition for Judicial Review—Southwest Kansas Royalty Owners Association

On December 31, 1958, after Petitions by all parties for rehearing had been denied, the Southwest Kansas Royalty Owners Association filed its Petition for a Judicial Review of the Commission's Order determining the six months market demand for gas produced from the Kansas Hugoton Field, which Order has been heretofore set forth.

The Royalty Owners Association filed its Petition for Judicial Review in the District Court of Stevens County, Kansas. It was assigned Case No. 4044 [Page 102].

Petition for Judicial Review—Southwest Kansas Royalty Owners Association

On December 31, 1958, after Petitions for Rehearings by all parties had been denied, the Southwest Kansas Royalty Owners Association filed its Petition for a Judicial Review of the Commission's Order determining the October, 1958, Allowables for the Kansas Hugoton Field.

The Royalty Owners Association filed its Petition for Judicial Review in the District Court of Stevens County, Kansas. It was assigned Case No. 4045 [Page 102].

Petition for Judicial Review—Northern Natural Gas Company

On January 15th, 1959, Northern Natural Gas Company filed its Petition for a Judicial Review of the Commission's Order determining the six months market demand for gas produced from the Kansas Hugoton Field, in the District Court of Finney County, Kansas. It was assigned Case No. 10,589 [Page 138].

APPENDIX B

IN THE DISTRICT COURT OF STEVENS COUNTY, KANSAS

SOUTHWEST KANSAS ROYALTY OWNERS ASSOCIATION, and PANHANDLE EASTERN PIPE LINE COMPANY,

Petitioners,

vs.

THE STATE CORPORATION COMMISSION OF THE STATE OF KANSAS,

Respondent,

NORTHERN NATURAL GAS COMPANY,

Intervenor.

Cases Numbered: 4044, 4045, 4046, 4047, 4048, and 4049.

Mr. Dale M. Stucky
901 First National Bank Bldg.
Wichita 2, Kansas

Mr. A. E. Kramer
Hugoton, Kansas

Mr. C. C. Linley
Liberal, Kansas

Mr. Chas. Vance
Liberal, Kansas

Mr. Clyde E. Milligan
Kansas Corporation Commission
Topeka, Kansas

Mr. Mark H. Adams
202 Board of Trade Bldg.
Wichita, Kansas

Order of Continuance

The above cases are before this court on:

1. Motion by Interyenor to dismiss for lack of jurisdiction; and

2. Judicial Review of Orders made by The State Corporation Commission of the State of Kansas.

Since the District Court of Finney County, Kansas has taken jurisdiction of the identical matters at issue in the above cases, as well as former companion matters, I can see no good that could result from any judgment by this court until a final disposition has been made of the identical matters in the District Court of Finney County, Kansas.

If this court makes the same findings and renders the same judgment, as those made and to be made by the District Court of Finney County, Kansas, then nothing beneficial is accomplished.

Findings and judgments by this court different or contrary to those made by the District Court of Finney County, Kansas, would result in two appeals to the Supreme Court on the same points.

Such results would not be beneficial to the litigating parties and would be harmful to the prestige and dignity of the judiciary of Kansas.

Therefore, this court, on its own motion, continues the above cases for decision until disposition has been made of the identical matters in the District Court of Finney County, Kansas, or until something further arises that is not at this time foreseen by this court.

/s/ L. L. Morgan
Judge L. L. Morgan
District Judge

APPENDIX C

DISTRICT COURT OF STEVENS COUNTY, KANSAS

Southwest Kansas Royalty Owners' Association, Petitioner, vs. State Corporation Commission of Kansas, Respondent.	Case No. 4104 4105 4110 4117

Order of Consolidation

Now on this 13th day of February, 1960, this action comes on for trial on the merits pursuant to setting of this case made on the call of the docket on the first day of the January term. Southwest Kansas Royalty Owners' Assn. appears by its attorneys, Dale M. Stucky, Robert Cornwell and A. E. Kramer; the Kansas Corporation Commission appears by J. Robert Wilson and John Townsend, its attorneys, and Panhandle Eastern Pipe Line Co. appears by C. C. Linley and Chas. Vance, its attorneys.

Upon oral motion of Panhandle Eastern Pipe Line Company made in open court, and upon argument of counsel, the court finds that cases 4104, 4109 and 4117, and all of the cases heretofore consolidated with them, should be consolidated with Case No. 4105, the market demand case, for the purpose of trial, judgment and further proceedings.

It is by the Court so ordered.

L. L. Morgan,
District Judge.

Approved:

C. C. Linley,
Chas. Vance,
By: C. C. Linley,
Attorneys for Panhandle Eastern Pipe Line Company.

J. Robert Wilson,
John Townsend,
By: John D. Townsend,
Attorneys for Kansas Corporation Commission.

Dale M. Stucky
Robert Cornwell,
A. E. Kramer,
By: Dale M. Stucky,
Attorneys for Southwest Kansas Royalty Owners' Association.

Filed: 2-24-60. John F. Fulkerson, Clerk of the Dist. Court.

APPENDIX D

DISTRICT COURT OF STEVENS COUNTY, KANSAS

The Southwest Kansas Royalty Owners Association, Petitioner, vs. The State Corporation Commission of the State of Kansas, Respondent.	Case No. 4105

Order for Consolidation and Additional Parties

Now, on this 6th day of February, 1960, comes on for hearing the motion of Panhandle Eastern Pipe Line Com-

pany to Consolidate and Join Additional Parties. Panhandle Eastern Pipe Line Company appears by Jeff A. Robertson, C. A. Conoley, C. C. Linley and Chas. Vance, its attorneys. Southwest Kansas Royalty Owners' Association appears by Dale M. Stucky, Robert Cornwell, and Kramer and Nordling, its attorneys. No other appearances are made.

Evidence is heard; the motion is argued and submitted to the Court.

The Court, being fully advised, finds that this case and Case No. 4107 were filed in this Court by separate plaintiffs both seeking judicial review of the same order of the Kansas Corporation Commission; that petitions also seeking to review the same order were subsequently filed in the District Court of Finney County by Colorado Interstate Gas Company, Northern Natural Gas Company, Cities Service Gas Company and Kansas-Nebraska Gas Company.

The said Commission Order is not subject to piece meal review from case to case and Court to Court; all parties who claim to be aggrieved by said order and who have appealed the same or subsequent monthly proration orders and reports of the Commission based thereon are necessary and indispensable parties to, and will have substantial rights affected by the decision in this case.

The Petition for review of the Commission's market demand determination for the 6 month proration period beginning October 1, 1959 and ending March 31, 1960, was filed in this Court before the petition attacking the same error was filed in any other case in either court; that the Commission's allowable orders for the months of October, November and December, 1959, were each based on the Commission's 6 month market demand determination aforesaid; that the jurisdiction of this Court, as to all four

Commission orders, became exclusive upon the prior filing of the market demand controversy herein; that all parties claiming to be aggrieved by said orders should be required to and must present their grievances in a single proceeding.

It Is Therefore by the Court Ordered: That Case No. 4107 in this Court, wherein Panhandle Eastern Pipe Line Company is plaintiff be, and hereby is consolidated with this case for trial and judgment.

It is further ordered that Northern Natural Gas Company, Colorado Interstate Gas Company, Cities Service Gas Company, and Kansas-Nebraska Gas Company be, and they hereby are directed to file in this Court such counter-abstracts of the record and other pleading as they may deem appropriate, on or before February 13, 1960, and to present to this Court and proceed in this Court only for determination of their grievances with the said Order.

It is further ordered that this order be effective as to each of said parties upon actual notice or knowledge of the entry thereof.

L. L. Morgan,
Judge.

Approved:

Panhandle Eastern Pipe Line Company,
By Chas. Vance,
C. C. Linley,
Southwest Kansas Royalty Owners' Association,
By Dale M. Stucky.

A true copy.

/s/ John F. Fulkerson,
Clerk of the District Court of
Stevens County, Kansas.

(Seal)

APPENDIX E

IN THE DISTRICT COURT OF STEVENS COUNTY, KANSAS

SOUTHWEST KANSAS ROYALTY OWNERS' ASSOCIATION, Petitioner, vs. THE STATE CORPORATION COMMISSION OF THE STATE OF KANSAS, Respondent.	Case No. 4105

Journal Entry

Now on this 13th day of February, a regular judicial day of the January, 1960 term, this action and the actions consolidated with it by order of the court, came on for trial pursuant to a setting made by the court on the first day of the term.

Petitioner appears by Dale M. Stucky, Robert Cornwell and A. E. Kramer, its attorneys; the Kansas Corporation Commission appears by J. Robert Wilson and John Townsend, its attorneys and Panhandle Eastern Pipe Line Company appears by C. C. Linley and Chas. Vance, its attorneys. All parties announce ready for trial; there are no other appearances.

The Court, having stated that Northern Natural Gas Company, Inc., Cities Service Gas Company and Colorado Interstate Gas Company did not appear on the first day of the term when the case was set for hearing, inquires whether any of said companies lacked actual notice of the order of this Court entered on February 6, 1960.

There is offered in evidence and ordered filed in the case the affidavit of Chas. Vance showing that certified copies of said Court order was mailed by certified mail to all parties and their attorneys on February 6, 1960; that the attached return receipts show delivery to all concerned on February 8, 1960. Thereupon counsel state to the Court that all parties and their attorneys had actual notice of this setting for trial on the merits by mail and otherwise. The court examined the files and finds that, although pleadings filed since the first day of the term appear to have been noticed for the first day of the March term, no application for a continuance has been made by any of the parties.

Thereupon the Court waits for one hour. There are no further appearances. The Court proceeds to hear the case upon argument of counsel and the transcript. At the conclusion thereof, it takes the same under advisement.

Thereafter, and on March 10, 1960, the Court, after being fully advised in the premises finds:

1. That, upon the Court's own motion, the orders made February 6, 1960, should be and the same are hereby set aside insofar as said orders affect and consolidate the cases pending in the Finney County District Court.

2. That the Report and Order dated November 10, 1959, and subsequent allowable orders of the State Corporation Commission are based on substantial competent evidence and are lawful and valid. Said report and order makes reasonable provisions for an orderly process correcting inequities (existing for more than ten years and which have progressively increased) discriminating in favor of the correlative rights of producers and royalty owners in the Oklahoma Hugoton Gas Field and against those in the Kansas Hugoton Gas Field; as provided by the Statutes of Kansas, Section 55-703, 1959 supplement.

It Is Therefore Ordered, Adjudged and Decreed that the Report and Order dated November 10, 1959, and subsequent allowable orders of the State Corporation Commission be and they are hereby affirmed.

/s/ L. L. Morgan,
Judge, District Court.

APPENDIX F

Northern Natural Gas Company's Special Appearance Motion to Vacate and Set Aside the Court's Judgment of March 10, 1960

Thereafter, on March 13, 1960, Motion was filed by Northern Natural Gas Company in consolidated case number 4105 in the District Court of Stevens County, Kansas, to Vacate, Set Aside and Hold for Naught the Court's Judgment of March 10, 1960, and for other relief as therein requested. A true copy of such Motion, without formal parts is as follows:

MOTION

Comes Now, Northern Natural Gas Company, a corporation, appearing specially and for the purpose of this motion only, and moves the court for an order vacating, setting aside and holding for nought the judgment herein entered on Thursday, March 10, 1960, for the reasons that the court was without authority or jurisdiction either of the person of this movant or the subject matter of this action. In support of this motion movant states:

1. That the Southwest Kansas Royalty Owners' Association is not a person aggrieved as that term is used in Sec. 55-606, G.S. 1949, and the filing by it of this purported action numbered 4105 is a nullity and the court thereby acquired no jurisdiction over the subject matter purported

to constitute the basis of a judicial review action; that this is also true and applicable with respect to cases numbered 4104, 4109, 4117 and any and all subsequent purported judicial review actions filed in said court by said Southwest Kansas Royalty Owners' Association purportedly adjudicated by this court's judgment dated Thursday, March 10, 1960.

2. That on February 13, 1960, movant filed in the above entitled case and in all of the other cases in the District Court of Stevens County, Kansas, purported to be adjudged in this court's judgment dated March 10, 1960, motions to quash, set aside and hold for nought this court's order dated February 6, 1960, insofar as it affects Northern Natural Gas Company, together with the findings in such order upon which it purports to be based and the purported service of said order upon movant as well as the purported service of notice of hearing upon which said order purports to be based for the reasons that the court was without authority or jurisdiction either of the person of this movant or the subject matter of movant's review action legally and timely filed on January 22, 1960, and pending as Case No. 19774 in the District Court of Finney County, Kansas, relating to the order or orders of the State Corporation Commission of the State of Kansas referred to in this court's order of February 6, 1960; that although movant's motion last mentioned was timely filed, no hearing has been permitted upon said motion and no order made with respect thereto.

3. That the above entitled action being a nullity, petitioner therein not being a person aggrieved authorized to institute such an action, any attempt to graft thereon other actions by consolidation or otherwise does not give this court jurisdiction of the subject matter purported to

be covered by the above entitled and numbered cause and actions consolidated therewith.

In event the court overrules the foregoing Motion, then this movant makes the following Motion:

MOTION.

Comes Now, Northern Natural Gas Company, a corporation, appearing specially and preserving and alleging its objection to the jurisdiction of the court both with respect to the person of this movant and the subject matter of this action as set forth in the foregoing motion of this movant which by reference thereto is incorporated herein the same as if written herein in words and figures and again respectfully moves this court to vacate, set aside and hold for nought its judgment entered herein on Thursday, March 10, 1960.

Subject to the objections to the jurisdiction of the court as aforestated, Northern Natural Gas Company requests the Court to open up, vacate and set aside its judgment entered Thursday, March 10, 1960, and permit this movant to participate in the presentation of said action on the merits, thereby permitting movant to present its respective contentions and arguments that the order of the State Corporation Commission of the State of Kansas, dated November 10, 1959, from which this purported judicial review action has been instituted, is invalid and should be set aside.

In event the court overrules the foregoing Motion, then this movant makes the following Motion:

MOTION TO VACATE JUDGMENT AND GRANT NEW TRIAL.

Comes Now Northern Natural Gas Company, a corporation appearing specially and preserving its objection to the jurisdiction of the court both with respect to the

person of this movant and the subject matter of this action as set forth in the foregoing motion of this movant which by reference thereto is incorporated herein the same as if written herein in words and figures, and again respectfully moves this court to vacate, set aside and hold for nought its purported judgment entered herein on Thursday, March 10, 1960, and for a new trial for each and all of the following reasons:

First: The court was and is without jurisdiction of this movant and of the subject matter of this action.

Second: Because of abuse of discretion of the court.

Third: Because of accident or surprise which ordinary prudence could not have guarded against whereby movant was not afforded a reasonable opportunity to be heard on the merits of the case.

Fourth: Erroneous rulings of the court.

Fifth: That the decision is contrary to the evidence.

Sixth: Because the service upon this movant purported to be bound by the judgment of this court in this cause entered Thursday, March 10, 1960, was constructive only, even if valid, which is denied.

APPENDIX G

IN THE DISTRICT COURT OF STEVENS COUNTY, KANSAS

Southwest Kansas Royalty Owners Association et al., Petitioners, vs. The State Corporation Commission of the State of Kansas et al., Respondents.	No. 4105

Journal Entry

Now on this 12th day of May, 1960, this matter comes on for hearing pursuant to notice to all parties on the Southwest Kansas Royalty Owners Association's motion to settle and determine the form of a Journal Entry reflecting the rulings and decisions made by this court on March 19, 1960, the Southwest Kansas Royalty Owners Association appears by and through its attorney, Robert T. Cornwell; the State Corporation Commission appears by and through its attorney, John T. Townsend; and Panhandle Eastern Pipe Line Company appears by and through its attorneys, C. C. Linley and Charles Vance. The court, after reviewing the file and being well advised, finds and determines that the following Journal Entry should be and hereby is entered as the court's journal entry covering the hearing held herein on March 19, 1960:

JOURNAL ENTRY

Now on this 19th day of March, 1960, this matter comes on for hearing on the motions filed by Northern Natural Gas Company, Panhandle Eastern Pipe Line Company and the Southwest Kansas Royalty Owners Association.

The State Corporation Commission appears by and through its general counsel J. Robert Wilson; Panhandle Eastern Pipe Line Company appears by and through its attorneys, C. C. Linley and Charles Vance; the Southwest Kansas Royalty Owners Association appears by its attorneys Dale M. Stucky and Robert C. Cornwell; and Mark Adams, Mark Adams II, Floyd Jensen and Daniel Hopkins announce to the court that they appear specially for Northern Natural Gas Company to present its motions filed on February 13, 1960, and March 14, 1960.

Thereupon Northern Natural Gas Company presents its motion, filed on March 14, 1960, to vacate the court's judgment entered herein on March 10, 1960, and the court, after hearing argument of counsel, finds that such motion should be overruled.

It Is So Ordered.

Thereupon Northern Natural Gas Company presents its motion, filed on March 14, 1960, to vacate the court's judgment entered herein on March 10, 1960, and to allow Northern Natural Gas Company to participate in the presentation of said judicial proceedings on the merits, and the court, after hearing argument of counsel, finds that such motion should be overruled.

It Is So Ordered.

Thereupon Northern Natural Gas Company presents its motion, filed on February 13, 1960, to quash, and the court, after hearing argument of counsel, finds that such motion should be overruled.

It Is So Ordered.

Thereupon Northern Natural Gas Company presents its motion, filed on December 26, 1959, to dismiss, and the court, after hearing argument of counsel, finds that

such motion is not properly before this court for determination at this time, and the court finds, in the alternative, that if such motion is properly before this court for determination at this time, such motion should be overruled.

It Is So Ordered.

Thereupon Northern Natural Gas Company, Panhandle Eastern Pipe Line Company and the Southwest Kansas Royalty Owners Association present their motions for a new trial, and the court, after hearing argument of counsel, finds that such motions should be overruled.

It Is So Ordered.

Judge Morgan.

IN THE

SUPREME COURT OF THE UNITED STATES

LIBRARY

OCTOBER TERM, 1964

Office-Supreme Court, U.S.
FILED
AUG 10 1964
JOHN F. DAVIS, CLERK

No. 83

NORTHERN NATURAL GAS COMPANY and CITIES SERVICE GAS COMPANY, Both Corporations,
Appellants,

vs.

THE STATE CORPORATION COMMISSION OF THE STATE OF KANSAS, SOUTHWEST KANSAS ROYALTY OWNERS ASSOCIATION and PANHANDLE EASTERN PIPE LINE COMPANY,
Appellees.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF KANSAS

JOINT MOTION TO DISMISS OF THE STATE CORPORATION COMMISSION OF THE STATE OF KANSAS

and

SOUTHWEST KANSAS ROYALTY OWNERS ASSOCIATION

*E. EDWARD JOHNSON, *General Counsel for State Corporation Commission of Kansas,*
Topeka, Kansas,
RICHARD C. BYRD, *Special Counsel for State Corporation Commission of Kansas,*
*DALE M. STUCKY, *Counsel for Southwest Kansas Royalty Owners Association.*

Of Counsel:

ANDERSON & BYRD,
Ottawa, Kansas,
FLEESON, GOOING, COULSON & KITCH,
Wichita, Kansas.

*Attorneys upon whom service should be made

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1964

No. 83

NORTHERN NATURAL GAS COMPANY and CITIES SERVICE GAS COMPANY, Both Corporations,
Appellants,

vs.

THE STATE CORPORATION COMMISSION OF THE STATE OF KANSAS, SOUTHWEST KANSAS ROYALTY OWNERS ASSOCIATION and PANHANDLE EASTERN PIPE LINE COMPANY,
Appellees.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF KANSAS

MOTION TO DISMISS

Pursuant to Revised Rule 16 of this Court, Appellees State Corporation Commission of the State of Kansas[1] and Southwest Kansas Royalty Owners Association[2] move to dismiss these appeals because the judgments of the Kansas Supreme Court rest on adequate nonfederal bases, the

1. Hereinafter called Commission.
2. Hereinafter called Landowners.

federal questions sought to be reviewed were not timely or properly raised and no substantial federal question is presented.

OPINIONS BELOW

The opinions of the Kansas Supreme Court are reported at 192 Kan. 1, 386 P.2d 266[3] and 192 Kan. 29, 386 P.2d 288.[4]

JURISDICTION

Appellants attempt to invoke the jurisdiction of this Court under 28 U.S.C. §1257(2).

QUESTIONS PRESENTED

Whether the judgments of the Kansas Supreme Court rest on adequate nonfederal grounds, whether the federal questions sought to be reviewed were timely and properly raised and whether any substantial federal question is presented.

STATEMENT OF THE CASE

These appeals involve gas proration orders issued by the Commission for the Kansas Hugoton Field. The orders are addressed and directed solely to producers—not purchasers—and fix the maximum amount of gas that can

3. Hereinafter called first opinion. Reproduced at Appendix A to Jurisdictional Statement.

4. Hereinafter called second opinion. Reproduced at Appendix B to Jurisdictional Statement.

be produced from each well. They are permissive orders and do not require any producer to produce any gas.

Each opinion of the Kansas Supreme Court disposed of several appeals, each of which involved several separate proceedings in the District Courts of Finney and Stevens Counties, Kansas. It will be necessary to outline the various proration orders involved in each proceeding in each District Court and the various judgments of the District Courts involved in the various appeals to the Kansas Supreme Court.

A. The First Opinion of the Kansas Supreme Court.

The first opinion of the Kansas Supreme Court disposed of Cases Nos. 41,515, 41,516, 41,555 and 41,556. Appellant Northern Natural Gas Company[5] has appealed these cases[6] (Appellant's Notice of Appeal to Supreme Court of the United States).

1. Cases Nos. 41,515 and 41,555.

Northern was not a party to these cases in the Trial Court and did not appeal the cases to the Supreme Court of Kansas (Nos. 41,515 and 41,516, Abstract of the Record, 337-8; Nos. 41,555 and 41,556, Appellants' Abstract of the Record, 181).

2. Cases Nos. 41,516 and 41,556.

Northern initiated these cases in the Finney County Court to review various proration orders and a general order. The Trial Court set aside the general order and set aside the Commission's proration orders and substi-

5. Hereinafter called Northern.

6. Appellant Cities Service Gas Company (hereinafter called Cities) has not appealed these cases to this Court.

tuted its own proration orders (Nos. 41,515 and 41,516, Abstract of the Record, 351-3; Nos. 41,555 and 41,556, Appellants' Abstract of the Record, 178-80).

The Supreme Court of Kansas reversed the judgments of the Finney County Court because, among other grounds:

(a) The Trial Court did not have jurisdiction to review the proration orders issued prior to November, 1957, because Northern had not filed petitions for rehearing with the Commission, as required by the Kansas Judicial Review Act[7] (192 Kan. at 10-2, 386 P.2d at 275-6; Appendix A to Jurisdictional Statement, A 14-8).

(b) The Trial Court did not have jurisdiction to review the general order because the attempted review proceeding was premature under the Kansas Judicial Review Act[8] (192 Kan. at 12-4, 386 P.2d at 276-7; Appendix A to Jurisdictional Statement, A 18-9).

(c) As to all proration orders, the Trial Court exceeded its authority under the Kansas Judicial Review Act,[9] by promulgating its own proration orders, rather than judicially reviewing the Commission's proration orders (192 Kan. at 14-6, 386 P.2d at 277-8; Appendix A to Jurisdictional Statement, A 20-3).

(d) The Trial Court erred in failing to make findings of fact and conclusions of law, as required by G.S. Kan., 60-2921 (192 Kan. at 16-7, 386 P.2d at 278-9; Appendix A to Jurisdictional Statement, A 23-5).

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7. G.S. Kan., 55-606.

8. *Ibid.*

9. *Ibid.*

B. The Second Opinion of the Kansas Supreme Court.

The second opinion of the Kansas Supreme Court disposed of Cases Nos. 42,175, 42,176, 42,185 and 42,230 (consolidated by the Kansas Supreme Court)[10] and 42,038. Appellants have appealed these cases (Appellants' Notices of Appeal).

1. Consolidated Cases.

These cases were initiated by Appellants and others in the Finney County Court to review various proration orders. The Kansas Supreme Court held that the Finney County Court lacked jurisdiction, under the Kansas Judicial Review Act,[11] to review such proration orders and reversed with instructions to dismiss (192 Kan. at 32-5, 386 P.2d at 290-2; Appendix F to Jurisdictional Statement, A 81-3).

2. Case No. 42,038.

The Landowners initiated this case in the Stevens County Court to review the same proration orders involved in the consolidated cases. Prior to trial, the Stevens County Court was informed that Appellants had, after the commencement of the Stevens County proceedings, filed petitions to review the same proration orders in the Finney County Court. The Stevens County Court ordered Appellants to present their grievances concerning such proration orders to the Stevens County Court (No. 42,038, Abstract and Counter Abstract of Southwest Kansas Royalty Owners Association, 239-41).

Appellants refused to follow the Court's order and did not participate in the trial. After that Court entered judg-

10. Hereinafter called consolidated cases.

11. G.S. Kan., 55-606.

ment. Appellants appealed and attempted to interject federal questions, for the first time, in the Kansas Supreme Court (*supra* at 243-5, 250-4, 316-8, 329-32).

ARGUMENT

I. The Judgments of the Kansas Supreme Court Rest on Adequate Nonfederal Bases.

Northern was not a party to Cases Nos. 41,515 and 41,555 and did not appeal the judgments of the Trial Court to the Kansas Supreme Court. It has no standing to appeal such cases to this Court.

In Cases Nos. 41,515, 41,516 and the consolidated cases, the Supreme Court of Kansas held that, under the Kansas Judicial Review Act,[12] the Trial Court did not have jurisdiction. This is clearly a nonfederal ground.

The Kansas Supreme Court also held, in Cases Nos. 41,515, 41,516, 41,555 and 41,556, that the Trial Court exceeded its authority, under the Kansas Judicial Review Act,[13] when it promulgated proration orders, rather than judicially reviewing the Commission's proration orders and erred in not making findings of fact and conclusions of law, as required by Kansas law.[14] Again, clear-cut nonfederal grounds.

This Court does not review state court judgments based on adequate nonfederal grounds:

> "It is a familiar principle that this Court will decline to review state court judgments which rest on inde-

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12. G. S. Kan., 55-606.

13. *Ibid.*

14. G.S. Kan., 60-2921.

> pendent and adequate state grounds, notwithstanding the copresence of federal grounds [Citations omitted]." *Fay* v. *Noia*, 372 U.S. 391, 428.

Other cases recognizing this rule are *Buck* v. *California*, 343 U.S. 99; *Nickel* v. *Cole*, 256 U.S. 222, 225; and cases cited therein.

In Case No. 42,038, Appellants did not raise any federal questions in the Trial Court. The Kansas Supreme Court has an "iron clad rule"[15] that it does not consider questions that were not presented to the Trial Court.[16]

Since Appellants did not raise any federal questions in the Trial Court, it was precluded from raising them in the Kansas Supreme Court.

This Court does not consider federal questions that were not properly raised in the lower courts.

In *Puget Sound Power & L. Co.* v. *King County*, 264 U.S. 22, this Court held that:

> "No evidence appears in the record that it raised an objection based on the 14th Amendment to the Federal Constitution or any other federal question in the superior court or supreme court. It is too late . . . to raise it in the assignment of errors in this court, even though it joins in the assignment with the street railway company, which did raise such an objection in all the courts." 264 U.S. at 25.

In *Edelman* v. *California*, 344 U.S. 357, this Court refused to review federal questions that had not been raised in the state court in the manner required by state law:

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15. *Karle* v. *Board of County Commissioners*, 188 Kan. 800, 805, 366 P.2d 241, 245.

16. *Ibid.*; *Krentz* v. *Haney*, 187 Kan. 428, 357 P.2d 793.

"It is clear that this Court is without power to decide whether constitutional rights have been violated when the federal questions are not seasonably raised in accordance with the requirements of State Law. [Citations omitted] Non-compliance with such local law can thus be an adequate state ground for a decision below." 344 U.S. at 358.

The judgments of the Supreme Court of Kansas are based on the adequate nonfederal grounds that the Trial Court lacked jurisdiction, exceeded its statutory authority and failed to follow state trial procedure; and that Appellants failed to timely and properly raise any federal questions in the lower courts. Any of these nonfederal grounds are sufficient to sustain the judgments of the Kansas Supreme Court. Appellants' appeals should be dismissed.

II. These Proration Orders Do Not Violate the Federal Constitution or the Natural Gas Act.

The above discussion demonstrates that no federal questions are properly presented and these appeals should be disposed of accordingly. However, due to the fact that imaginative counsel, aided by a voluminous record, have distorted these appeals to the point that the Kansas Supreme Court and the Commission have been accused of engaging in an "unlawful scheme",[17] we feel compelled to briefly mention the merits of these appeals.

Cases Nos. 41,515, 41,516, 41,555 and 41,556 were decided under a statute[18] that was "repealed"[19] in 1959. We submit that a decision of a state court interpreting a state

17. Jurisdictional Statement, 35

18. G.S. Kan., 55-703.

19. Laws of Kansas, 1959, ch. 237, sec. 3.

statute that has been repealed does not present a substantial federal question.

Appellants contend that these proration orders violate the Commerce Clause of the Federal Constitution. This contention was rejected by this court in *Cities Service Gas Company* v. *Peerless Oil & Gas Co.*, 340 U.S. 179. There the Oklahoma Commission ordered an interstate purchaser to buy gas and fixed the price to be paid. In that case, Cities Service also contended that such order violated the commerce clause.

> The Court disposed of the argument in short order; "It is now well settled that the state may regulate matters of local concern over which federal authority has not been exercised, even though the regulation has some impact on interstate commerce." 340 U.S. at 186.

We have some difficulty understanding Appellants' contention that these proration orders invade the jurisdiction of the Federal Power Commission. If they mean that the Federal Power Commission has the exclusive power to prorate gas for all states, the argument is without any merit.

The Federal Power Commission recognizes that it has no such authority:

> '[petitioner's] contentions in effect are that this Commission should perform the functions of prorating takes and adjusting correlative private rights of producers within a field; matters which it seems to us should be decided by the Commonwealth of Kentucky. . . .' *Reserve Oil and Gas Co., et al.*, Docket Nos. G-4720, *et al.*, issued April 2, 1964.[20]

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20. Rehearing has since been granted on other issues.

This position is in accord with the decisions of this Court.

In *Federal Power Commission* v. *Panhandle Eastern Pipe Line Co.*, 337 U.S. 498, this Court noted that:

> "The legislative history of this Act is replete with evidence of the care taken by Congress to keep the power over the production and gathering of gas within the states. This probably occurred because the state legislatures, in the interest of conservation, had delegated broad and elaborate power to their regulatory bodies over all aspects of producing gas." (Footnotes omitted). 337 U.S. at 509-13.

In the footnote to the above quotation, this Court said, "See, for example, Kansas Gen. Stat. C. 55, §§ 701-713. . . ."[21]

Appellants seek to evade the plain Congressional mandate concerning state control of production and the decisions of this Court by asserting that the present appeals are virtually identical to *Northern Natural Gas Company* v. *State Corporation Commission*, 372 U.S. 84. We submit that such case does not abrogate the power of a state to prorate gas.

This Court very carefully noted in *Northern*, *supra*, that:

> "The danger of interference with the federal regulatory scheme arises *because* these orders are unmistakably and unambiguously directed at purchasers who take gas in Kansas for resale after transportation in interstate commerce. In effect, these orders shift to the shoulders of interstate purchasers the burden of performing the complex task of balancing the output

21. *Federal Power Commission* v. *Panhandle Eastern Pipe Line Co.*, 337 U.S. 498, 513, n. 17.

of thousands of natural gas wells within the State, cf. *Miller Bros. Co.* v. *Maryland*, 347 U.S. 340—*a task which would otherwise presumably be the State Commission's.*" (Emphasis supplied). 372 U.S. at 920.

After reviewing many of its decisions interpreting the National Gas Act, the Court concluded that:

> "Thus our cases have consistently recognized a significant distinction, which bears directly upon the constitutional consequences, between conservation measures aimed directly at interstate purchasers and wholesalers for resale, and those aimed at producers and production." 372 U.S. at 94.

After twice pointing out that the order involved in *Northern, supra,* was invalid because it attempted to regulate purchasers, the Court noted that:

> "The State does not, however, appear to be without alternative means of checking waste and disproportionate or discriminatory taking." 372 U.S. at 94.

In the footnote to this quotation, this Court noted that "the availability of regulatory alternatives, particularly in the form of proration and similar orders directed at producers, has been much discussed."[22]

In the same note to *Northern, supra,* the Court also directed attention to the following portion of *Colorado Interstate Gas Co.* v. *Federal Power Commission*, 324 U.S. 581, 602-3:

> "That does not mean that the part of §(b) which provides that the Act shall not apply to the production of gathering of natural gas is given no meaning. Certainly that provision precludes the Commission from

22. *Northern Natural Gas Company* v. *State Corporation Commission*, 372 U.S. 84, 94, n. 17.

any control over the activity of producing or gathering natural gas. For example, it makes plain that the Commission has *no* control over the drilling and spacing of wells *and the like*." (Emphasis supplied).

The great pains taken by this Court in *Northern, supra,* to remove any fears that its decision was meant to curtail state regulatory powers,[23] cannot be minimized. It is in harmony with the previous pronouncements of this Court that the "Act had . . . no purpose or effect to cut down state power"[24] and the well known Congressional intent that the Act "takes no authority from State Commissions as it is so drawn as to complement and in no manner usurp State regulatory authority."[25]

Proration orders have always been the backbone of state regulation. Many states were prorating gas when the Natural Gas Act was passed.[26] It is inconceivable to think that Congress intended to transfer such power to the Federal Power Commission.

We find it difficult to believe that Appellants are now contending that the state has no power to prorate gas. In the lower courts, they contended that the state had such power. Their only complaint was that the Commission refused to allow a combination of privately owned pipeline companies to determine the amount of the allow-

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23. See dissenting opinion by Mr. Justice Harlan (372 U.S. 84, 98).

24. *Panhandle Eastern Pipe Line Co. v. Public Serv. Com.*, 332 U.S. 507, 517.

25. H. R. Rep. No. 709, 75th Cong., 1st Sess., p. 2.

26. 5 Summers, Oil and Gas, §§921-44; Murphy, Conservation of Oil & Gas (1948).

ables, without regard to waste, correlative rights, market demand or the interest of the public.[27]

Appellants control slightly more than 60% of the field's deliverability.[28] They want the power to set allowables because they are the majority. If given this power, they can substantially curtail or increase production as suits their desires, even if their accelerated rate of production would permanently damage the producing formation.

Appellants have paraded horribles before the Court to such an extent that it appears that utter chaos will occur if these proration orders are allowed to stand. For eight (8) years, Appellants have been predicting that the "whole comprehensive scheme of federal regulation. . ." would become a shambles and fail[29] if the Commission issued these allowable orders. The Commission issued these orders eight (8) years ago. There has been no conflict between state agencies or with the Federal Power Commission.

It would be foolish to deny that these proration orders may have some residual effect on interstate purchasers, as will any other conservation order, or safety regulation, or workmen's compensation law, or severance tax, etc. This, however, does not mean that a state is powerless to prorate gas, any more than it means that a state cannot levy a severance tax.

These appeals do not present any substantial federal questions and should be dismissed.

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27. 192 Kan. 1, 22-3, 386 P.2d 266, 282-3, Appendix A to Jurisdictional Statement, 32-3.

28. No. 42,038, Abstract and Counter Abstract of Southwest Kansas Royalty Owners Association, 102.

29. Jurisdictional Statement, 32.

CONCLUSION

The decisions of the Kansas Supreme Court rest on adequate nonfederal grounds. Appellants failed to timely and properly raise any federal questions. In any event, such judgments do not involve a substantial federal question.

Appellees' motion should be granted and the appeals dismissed.

Respectfully submitted,

E. EDWARD JOHNSON, *General Counsel for State Corporation Commission of Kansas,*
Topeka, Kansas,

RICHARD C. BYRD, *Special Counsel for State Corporation Commission of Kansas,*

DALE M. STUCKY, *Counsel for Southwest Kansas Royalty Owners Association.*

Of Counsel:

ANDERSON & BYRD,
Ottawa, Kansas,

FLEESON, GOOING, COULSON & KITCH,
Wichita, Kansas.

IN THE

SUPREME COURT OF THE UNITED STATES

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OCTOBER TERM, 1964

Nos. 83 and 140

NORTHERN NATURAL GAS COMPANY, a Corporation, and CITIES SERVICE GAS COMPANY, a Corporation,
Appellants,

vs.

STATE CORPORATION COMMISSION OF THE STATE OF KANSAS et al.,
Appellees.

KANSAS-NEBRASKA NATURAL GAS COMPANY, INC., a Corporation,
Appellant,

vs.

STATE CORPORATION COMMISSION OF THE STATE OF KANSAS et al.,
Appellees.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF KANSAS

JOINT REPLY BRIEF OF APPELLANTS TO MEMORANDUM BRIEF FOR THE FEDERAL POWER COMMISSION AS AMICUS CURIAE

CONRAD C. MOUNT
CHARLES V. WHEELER
*GEORGE E. PEABODY
P. O. Box 1995
Oklahoma City, Oklahoma
*MARK H. ADAMS
MARK H. ADAMS, II
503 Colorado Derby Bldg.
Wichita, Kansas
Attorneys for Appellant, Cities Service Gas Company

F. VINSON ROACH
JACK C. OSBORNE
*PATRICK J. MCCARTHY
2223 Dodge Street
Omaha, Nebraska
*MARK H. ADAMS
MARK H. ADAMS, II
JOE ROLSTON
503 Colorado Derby Bldg.
Wichita, Kansas
Attorneys for Appellant, Northern Natural Gas Company

JAMES D. CONWAY
*ELMER J. JACKSON
Hastings, Nebraska

*MARK H. ADAMS
MARK H. ADAMS, II
JOE ROLSTON
503 Colorado Derby Building
Wichita, Kansas
Attorneys for Appellant, Kansas-Nebraska Natural Gas Company, Inc.

*Attorneys upon whom service should be made.

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The position taken by the Federal Power Commission in these appeals disregards the dominant issue presented to this Court, misinterprets the direct operative effect of

the orders here in question, misconstrues the decisions of this Court, interpreting the Natural Gas Act, and presupposes a fallacious and nonexistent factual basis to support its position that these cases do not present a substantial federal question. That position is diametrically opposed to the one previously announced by it in the first phase of this controversy submitted to this Court in *Northern Nat. Gas Co. v. State Corp. Com.*, (1963) 372 U.S. 84, 9 L. Ed. 2d 601, 83 S. Ct. 646, reh. den. 372 U.S. 960, 10 L. Ed. 2d 14, 83 S. Ct. 1011. Such will be demonstrated by appellants to the Court in this brief.

I

The Federal Power Commission Assumes a Fallacious and Nonexistent Factual Basis to Support Its Views

The F. P. C. memorandum displays a complete misunderstanding of the facts involved in these appeals and the effect of these state orders on the functions of the interstate operation of natural gas pipeline purchasers in the Kansas Hugoton gas field. *The F.P.C. understood all this once.* In *Northern, supra*, the first phase of these appeals, the F.P.C. early filed a memorandum with this Court as *amicus curiae* taking the position on appellees' motion to dismiss, that the federal questions were substantial and warranted plenary consideration by this Court (p. 2). There it stated th t the entire Hugoton field, which extends also into Oklahoma and Texas constitutes a single source of supply. It attached to the memorandum a map of the Kansas portion of the field showing with respect to each section the pipeline or pipelines connected to the wells in such section, and showing that the connections of each pipeline are interspersed with those of others in such

high degree that differences in rate of take between one pipeline and another must necessarily result in drainage. It stated that it had reviewed the Kansas Commission gas proration orders and reports, and that they showed that the takes of the six leading purchasers in 1961, expressed as percentages of the allowable production of the wells with which they were connected, varied from 81.58% to 96.43%, calling this "substantial differences in the rates of take among the various purchasers in the Kansas-Hugoton field." It went on to state that the year 1960 showed a comparable range, and concluded therefrom that the Kansas Commission was not protecting the correlative rights of adjacent land owners, but rather was freely tolerating "inequalities in the pipelines' several rates of purchase and thereby permit (ting) continued drainage from groups of wells to neighboring groups." (*id.* 3).

It advised this Court that its review of the course of regulation by the Kansas Commission during the last several years prior thereto confirmed its view that the Kansas Commission was endeavoring to constrain interstate pipelines to buy more gas from Kansas sources.[1]

---

1. The F.P.C. memorandum stated on pages, 4, 5, 6, 7 and 8:

"On January 22, 1958, the Commission issued a report and order changing its method of fixing allowables. Kansas State Corporation Commission, *Twenty-Fourth Biennial Report*, p. 213. Theretofore, the nominations by purchasers from the Kansas-Hugoton field of the amounts they expected to purchase during the ensuing six-month period had been considered by the Commission to be the market demand for the field (*id.* at p. 216). Stating that the Oklahoma portion of the reservoir was being depleted approximately twice as fast as the Kansas portion and the Texas portion at an even higher rate (with consequent drainage to those states f. m Kansas) (*id.* at p. 215), the Commission decided that, in determining market demand in the future it should consider, in addition to the nominations by purchasers, the following factors (*id.* at p. 218):

(1) Takes from other sources of supply to which the purchasers are connected

As the F.P.C. stated (*id.* p. 8) the Kansas Commission has, in its proration orders, been basing its determination of "the market demand" on evidence showing that if the

---

(2) The total markets for natural gas of all purchasers from the Kansas-Hugoton Field; the rate of increase therein compared to the rate of increase in the takes from the Kansas portion of the Hugoton Field.

"The concurring opinion of Chairman Beatty emphasized the objective of increasing Kansas production at the expense of Oklahoma (*id.* at pp. 210-220):

Intervenors have urged us to continue the practice of setting high monthly allowables which was started by the Commission in April, 1956. They have asked us to increase the allowables 25% more even though the Commission since April, 1956, has been allowing somewhat more than the market actually absorbed. This benefited pipe line companies in need of gas, usually those overproduced. It was coercive on those who did not have proportional markets, those usually underproduced. It has not been effective so far, but if and when it has the intended effect of forcing higher takes, it will allow the producers and royalty owners to convert their minerals into cash more quickly. The only visible results in the last nineteen months, however, have been no increase in takes and a gradually mounting net underage. The net allowable is now 52 million M.c.f. higher than the amount that will be actually taken and marketed this month, but if it is carried for awhile, the pipe line companies may find a market for it.

* * *

I am most heartily in favor of Kansas resources being harvested and marketed by Kansas people and Kansas industries, rather than by Oklahomans, and my sympathies are with the Kansas royalty owners, some of whom have had to sell their birthright to the pipe line companies for a mess of pottage (as low as 3¢ to 8¢ per M.c.f.) and are now having the pottage rationed to them in small spoonfuls, but whether we, a conservation commission, should try to force the sale and depletion of our natural gas at today's low prices, raises another question. Gas is a most desirable fuel. America's reserves of natural gas are being depleted one hundred times faster than our coal reserves. Aside from the question of our authority and jurisdiction to execute such a program under present conservation statutes, such a program may, in retrospect, prove to be very unwise, considering the welfare of the state as a whole.

"Notwithstanding the recognition that the mere raising of the allowables had not been effective so far, the Kansas

interstate pipeline purchasers took gas from the Kansas Hugoton field at the same rate relative to reserves as from their other connections the "fair market demand" for the field would be in excess of the pipelines' nominations, and each time Kansas Commission allowables have exceeded those nominations. Each of such proration orders has contained findings that the Kansas Commission is not bound by the contractual relationships between producers and purchasers, and that the Kansas portion of the Hugoton field has not been getting its fair share of the purchasers' markets.

Commission continued to consider factors other than the purchasers' nominations in determining the 'market demand,' on which allowable production from the Kansas-Hugoton field has been based. Thus, in its order of October 8, 1958, determining market demand for proration purposes, the Commission found that the pipelines' nominations totalled 238,634,540 Mcf for the six months ending March 31, 1959, and that this total was lower than the nominations for the same periods of the two preceding years. It found that 'the consumptive market of the purchasing pipeline companies has increased' since March 31, 1958, and noted evidence that—

> • • • if the five largest purchasers (purchasing pipeline companies) would take gas from the Kansas-Hugoton Gas Field at the same rate based on comparative gas reserves as they now do from the other sources to which they are connected, the Kansas-Hugoton Gas Field's fair share of the markets would be 676,904,000 Mcf for the twelve months' period This indicates that the market demand for the next six months would be approximately 430,000,000 Mcf. • • •

The commission ultimately fixed total allowables for the six-month period at 255,000,000 Mcf.

> "In a similar order, dated April 22, 1959, fixing allowables for the six months from April 1 to September 30 of that year, the Kansas commission again found that the pipelines' nominations of 169,413,250 Mcf did not reflect the 'fair market demand' for the Kansas-Hugoton field. Evidence showed that, if the five largest purchasers took gas from that field at the same rate relative to reserves as from their other connections, the field's share would be 241,519,000 Mcf. Evidence also showed that the Kansas-Hugoton reserves of the four leading purchasers amounted to 44% of their total reserves, but that these companies were supplying only 23%

The orders complained of in the instant appeals, which are the same orders and regulations above referred to by the F.P.C. in such *amicus curiae* memorandum, have been accumulating from May, 1956 to date. It is impossible to understand how the F.P.C. can in one context (*id.* p. 9) state that the regulations and orders of the Kansas Commission there involved:

> "* * * do not regulate such matters as 'the drilling and spacing of wells' (*Colorado Interstate Gas Co.* v. *Federal Power Commission*, 324 U.S. 581, 603), or 'the physical activities, facilities, and properties used in the production and gathering of natural gas' (*Phillips Petroleum Co.* v. *Wisconsin*, 347 U.S. 672, 678) * * *."

and state in the instant context that *these* orders "are directed at producers rather than pipelines, and regulate production rather than purchasing", and that therefore "they fall within the sphere of natural gas regulation re-

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of their over-all markets with Kansas-Hugoton gas. Although evidence as to drainage of gas from Kansas into Oklahoma was conflicting and inconclusive, the total allowables were fixed at 175,000,000 Mcf, or 5,586,750 Mcf above the pipelines' nominations.

"In another order, dated November 10, 1959, fixing allowables for the six months to March 31, 1960, the Commission said:

> Nominations and runs are often controlled or influenced by contracts between the producers and purchasers. These contracts do not necessarily bear any relationship to the market demand for gas from the Kansas-Hugoton Gas Field or any gas field, and they are not binding upon the Commission in carrying out its regulatory duties.

"In each subsequent proration order, the 'market demand' has been based on considerations similar to those stated in the orders discussed above, and each time allowables have exceeded the nominations of the pipelines. Each order has contained findings that the Commission is not bound by the contractual relationships between producers and purchasers; that the Kansas-Hugoton field is not getting its fair share of the purchasers' markets; and that purchases have been lower, in proportion to reserves, in Kansas-Hugoton than over-all."

served to the States by Section 1 (b) of the Natural Gas Act, 15 U.S.C. 717 (b)."

(FPC *amicus curiae* memorandum in these cases, p. 2)

The F.P.C. (p. 12, *amicus curiae* memorandum, these cases) attempts to distinguish its position in 1962 *vis a vis* 1964, by asserting that in its earlier memorandum it stated that the "ratable-take" orders there involved supplied the element that was missing in the Kansas Commission's previous attempts to force more Kansas gas into the interstate market by merely raising the allowables or ceilings.[2]

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2. Irrespective of its studious choice of words in its two opinions here under review the Kansas Supreme Court has never been in doubt as to the purpose and operative effect of the Kansas Commission's allowable orders since May of 1956. In its opinion denying motion for rehearing in *Northern Natural Gas Co.* v. *State Corporation Commission*, 188 Kan. 624, 625, 364 P.2d 668, the Court stated:

> "Northern has in this case cast some reflection upon the increase of allowables in 1958 by the Kansas Commission. The record contains no facts concerning this action of the Commission. But we must assume that the Commission believed that the market was sufficient to warrant the increase. Moreover, if we are justified in taking judicial notice of facts, we must also assume that the Kansas allowables were not greater than the Oklahoma allowables. And we notice that it was generally thought to be a fact that drainage of gas was occurring from the Kansas-Hugoton field to that part of the field in Oklahoma.
>
> "Thus, in 1958, the Commission may have been, in a roundabout way, endeavoring to set up ratable taking as between Kansas wells and Oklahoma wells by increasing the allowables of the Kansas wells.
>
> "Of course, none of this is involved in the record of the case before us. However, we may direct attention to the news story on page 54, in *Newsweek* for July 10, 1961, entitled *Natural Gas: Two Straws*. It is there noted that the Hugoton field covers some 4.1 million acres in Kansas, Oklahoma and Texas; that most of the estimated 300 trillion cubic feet of gas in the field lies under Kansas soil, but that Oklahoma supplies the major share of the 2 million cubic feet pumped daily northward through the pipe lines."

But this is based on a misreading of *Northern, supra*, since that case did not turn on the mere fact that the orders there were directed at purchasers rather than producers. (Cf. *Cities Service Gas Co. v. State Corporation Commission*, 180 Kan. 454, 461, 304 P.2d 528, reversed by this Court in its *per curiam* opinion at 355 U.S. 391, 2 L. Ed. 2d 355, 78 S. Ct. 381, despite the fact the Kansas Court had analyzed the Kansas Commission minimum price order and construed it as being directed primarily at producers rather than purchasers.) Furthermore, even if these instant orders were not having any particular impact in 1958, in respect of forcing more Kansas gas into the interstate market, it is an unwarranted assumption that the same must have been true in 1959, and years subsequent thereto. It was in such subsequent years that the heavy accumulation of underages (allowables in excess of purchasers' market demand) began to result in substantial cancellations, which themselves impose a serious penalty for noncompliance with the Kansas Commission policy of forcing higher takes from the field.[3]

What was cancelled was the right to take (purchase) and place into interstate transmission natural gas dedicated to particular interstate markets by long term gas purchase contracts, after the sales and service under those contracts had been certificated by the Federal Power Commission as being required by the public convenience and necessity.

At page 10 of its memorandum the Federal Power Commission mistakenly asserts that these appellants do not

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3. By July 1, 1963, the Kansas Hugoton gas field had approximately 300 billion cubic feet of underages on the Kansas Commission schedules; of that amount, approximately 80 billion cubic feet of underages were cancelled. (Views and Comments of Northern Natural Gas Company and Cities Service Gas Company, R. II, Vol. VIII, part 3, p. 17)

question the power of the Kansas Commission to cancel underages. This is simply not correct, for it is the cancellation of those underages which has damaged appellants, and which provides the goad or whip which the Kansas Commission has wielded to force greater takes from the Kansas part of the field. The Federal Power Commission (*id.* p. 5), after an over-simplified analysis of the Kansas Commission's previous method of proration of gas (field-in-balance, pre-May, 1956), appears to challenge the validity of that method of proration because, it asserts, an under-connected purchaser in the field could not secure all of the gas from that field it desired. On the other hand, the F.P.C. (*id.* p. 10) criticizes appellants for not challenging the same Basic Proration Order, even though it is clear that cancellations can result under its mechanics. The validity or invalidity of the Basic Proration Order itself or the Commission's method of gas proration prior to May, 1956, are not at issue here.

It makes not one iota of difference what formula or method the Kansas Commission has used in the past. That is not the problem in these appeals. As was well stated by this Court in *Northern, supra*, page 93:

> "* * * the problem is *only* whether the Constitution sanctions the particular means chosen by Kansas to exercise the conceded power (conservation of natural resources) if those means *threaten effectuation* of the federal regulatory scheme." (Emphasis and parenthetical insert supplied.)

Put another way, do the orders of the Kansas Commission presently before this Court upon this record, by operative effect, impede the jurisdiction of the Federal Power Commission in consummating its duties enjoined upon it by Congress under the Natural Gas Act?

The F.P.C. chides appellants for not challenging any specific cancellation order (*id.* p. 10). This is simply not the case. As will be noted from a review of the record, the Kansas Commission allowable orders are the orders which result in cancellation, and each order is challenged.

The main thrust of argument in the F.P.C. memorandum appears to be that since the Kansas Commission has in fact declared a moratorium upon the further cancellation of underages and has announced that any underages previously cancelled will be reinstated *under certain conditions*, that these appeals are premature—that there is "no occasion for the Court to entertain (them) at this time." But the "gift" of reinstatement is only illusory even though obviously calculated to make these appeals untenable in a context where the Kansas Commission probably felt they were otherwise tenable. (See Jurisdictional Statement, No. 83, footnote No. 33, p. 29.) The taste of the wine of power is potent. One must assume that the Kansas Commission is familiar with the biblical expression "The Lord giveth and the Lord taketh away." Here the Kansas Commission took it away and giveth it back—maybe.[4]

The F.P.C. memorandum seems to argue in a vacuum, putting up and knocking down non-existent strawmen. It states on page 7:

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4. To correctly understand the possible effect of this expression of largess on the part of the Kansas Commission in its order restoring underages it had previously cancelled, there must be taken into consideration the complete physical impossibility of such restored underages being run within the 12-month limitation period fixed by the Kansas Commission. That this physical impossibility existed at such time is made evident by the fact that the Kansas Commission has presently noticed a public hearing for November 5, 1964, to determine whether or not the time for running restored underages (previously cancelled) should be extended.

> "The State of Kansas plainly has no duty under federal law to regulate the production of natural gas *at all* * * *."

Appellants were not aware this statement was an issue here. Obviously if there had been no state regulation of production there would have been no cancellation of underages, legal or illegal. One of the overriding issues here is whether the Kansas Commission, under the guise of gas proration, may, by direct operative effect, force interstate pipeline purchasers in the Kansas Hugoton field, such as these appellants, to increase their purchases of gas therein, thereby forcing them to reduce their purchases from other fields within and without the State, or, as a consequence of their failure so to do, suffer their dedicated gas reserves to be necessarily diverted to another underconnected pipeline company taking gas from such field to satisfy its markets and thus be lost forever.[5]

From its apparent complete failure to understand the Kansas Commission orders here complained of, the F.P.C. reaches the conclusion set out on page 9 of its memo:

> "The logic of the appellants' argument would thus lead to the extraordinary conclusion that the less restrictive the State's regulation of production becomes, the more it impinges upon the jurisdiction of the Power Commission, and that a State statute which did away with the proration system altogether would represent the maximum encroachment upon the federal domain."

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5. As the F.P.C. *amicus curiae* memorandum supporting appellant's jurisdictional statement in *Northern*, *supra*, stated on pages 9 and 10:

> "Moreover, to the extent that the Kansas Commission's action constrains interstate pipelines to alter their takes of gas from different wells—both those located in Kansas and those located in other States—the action has direct impact upon the cost of gas to the pipelines and to the ultimate consumers."

What the F.P.C. memorandum utterly fails to demonstrate is that the restriction in the Kansas orders complained of is absolutely lacking as to the *volumes* of gas which any purchaser may run in the field, but is effectual in *compelling fictitiously increased allowables to be either run or lost.*

II

The Dominant Issue Presented in These Cases

The controlling question in these appeals remains in legal effect the same as that presented by *Northern, supra.* On page 93 of this Court's opinion in that case it is said.

> "But the problem of this case is not as to the existence or even the scope of a State's power to conserve its natural resources; the problem is only whether the Constitution sanctions the particular means chosen by Kansas to exercise the conceded power if those means threaten effectuation of the federal regulatory scheme."

There is no distinction, either in logic or law, between orders directed at a purchaser of natural gas in interstate commerce for resale and orders the operative effect of which accomplish the same result. The Court will always look through the form to the substance of allegedly invalid orders.

The F.P.C. on page 2 of its brief in this litigation, casts its argument in one mold when it asserts:

> "The appellants nonetheless contend that the challenged orders encroach upon the jurisdiction of the Power Commission under the Natural Gas Act. However, inasmuch as the instant orders, unlike the ratable-take orders condemned by this Court in *Northern Natural Gas Co. v. State Corporation Commission of Kansas*, 372 U.S. 84, are directed at producers rather

than pipelines, and regulate production rather than purchasing, the Power Commission believes that they fall within the sphere of natural gas regulation reserved to the States by Section 1(b) of the Natural Gas Act, 15 U.S.C. 717(b). To be sure, an indirect effect of the orders may be to increase the overall pipeline purchases in the Kansas and Hugoton Field. But the orders themselves do not require any such increase or indeed any modification whatever in established purchasing patterns. (Such orders, however, do so by direct operative effect.) (Parenthetical insert supplied.)

In the previous phase of this controversy, on page 25 of its brief, on the merits in *Northern, supra*, the F.P.C. cast its argument in a totally different mold, saying.

"The natural gas industry differs from other industries in that the production of the commodity (i.e., the withdrawal of gas from the well) and its movement into interstate channels constitute one and the same physical operation. Thus, a regulation limiting the volume a pipeline may purchase from a given well would be tantamount in effect to a limitation upon the production of that well. *In order, therefore, to determine whether the present orders fall within the 'production and gathering' exemption of Section 1(b), it is necessary to look beyond their nominal subject matter and attempt to discern the degree and nature of their impact upon interstate commerce.*" (Emphasis supplied.)

And on page 30 saying:

"*A scheme of regulation which carries with it the practical consequence that interstate pipe lines must take increased quantities of gas from a State (or pay contractual penalties) (or, as appellants show in this litigation, suffer other extremely adverse consequences) cannot be regarded as a conservation measure*

> *or as a regulation within the boundaries of the 'production and gathering' exemption set forth in section 1(b) of the Natural Gas Act. Rather, it is a 'regulation of interstate commerce—one which stands on no better footing than the Kansas minimum price regulation which this Court ha already held invalid. Cities Service Gas Co.* v. *State Corp. Commission of Kansas,* 355 U.S. 391." (Emphasis and second parenthetical insert supplied.)

The respective positions of the Federal Power Commission taken as above set forth are clearly inconsistent with each other. The position it took in the first phase of this controversy is the correct one. That which it has taken in this litigation is patently erroneous. If the State of Kansas has the regulatory power to "increase the overall' pipelin purchases in the Kansas Hugoton field, whether this effect of its orders be direct or indirect, then each other state has similar powers. Whether the exercise of this power constitutes a direct or oblique attack upon the comprehensive scheme of federal regulation is of no consequence. What the Court said in *Northern, supra,* pages 92-93, is fully applicable here:

> "It may be true, as the State Commission urges, that accommodation on the part of the Federal Power Commission could *avoid* direct collision—but this argument misses the point. *Not* the *federal but* the *state regulation must be subordinated, when Congress has so plainly occupied the regulatory field. Cf. San Diego Bldg. Trades Council* v. *Garmon,* 359 U.S. 236, 3 L. Ed 2d 775, 79 S. Ct. 773. We have already said that the *question* to be asked under this *statute* is *'whether state authority can practicably regulate a given area and, if we find that it cannot, then we are impelled to decide that federal authority governs.' Federal Power Com.* v. *Transcontinental Gas Pipe Line Corp.,* 365 U.S. 1, 19-20, 5 L. Ed. 2d 377, 389, 390, 81 S. Ct. 435." (Emphasis supplied.)

Apparently the F.P.C. is here attempting to revert to the position it took in *Phillips Petroleum Co.* v. *Wisconsin*, (1954) 347 U.S. 672, 98 L. Ed. 1035, 74 S. Ct. 794 (and rejected by the Court), where, on page 677 of the opinion, this Court said:

> "They (petitioners, including F.P.C.) contend, however, that the affirmative grant of jurisdiction over such sales in the first clause of Section 1(b) is limited by the negative second clause of the section. In particular, the contention is made that the sales by Phillips are a part of the 'production or gathering of natural gas' to which the Commission's jurisdiction expressly does not extend." (Parenthetical insert supplied.)

This Court then said: "We do not agree." The Court thereupon proceeded to analyze Section 1(b) of the Natural Gas Act and its adjudicated cases pertaining thereto. Insofar as appellants are aware this Court has not departed from its rule in *Phillips, supra*, but has consistently adhered thereto.

III

Federal Power Commission Misinterprets the Operative Effect of These Orders

In *Phillips, supra* (p. 679), this Court, referring to *Interstate Natural Gas Co.* v. *Federal Power Com.*, 331 U.S. 682, 690-691, 91 L. Ed. 1742, 67 S. Ct. 1482, noted that exemptions to the primary grant of jurisdiction in the Federal Power Commission under Section 1(b) of the Natural Gas Act are to be *strictly* construed, and held that such section conferred jurisdiction in the Commission over sales in interstate commerce of natural gas for resale. It further held (p. 681):

> "The cases discussed above supply a ready answer to the determination of the Commission and also to peti-

tioners' suggestion that 'production or gathering' should be construed to mean the '*business*' of production and gathering, with the sale of the product considered as an integral part of such '*business*'. We see no reason to depart from our previous decisions, especially since they are consistent with the language and legislative history of the Natural Gas Act." (Emphasis supplied.)

In *Saturn Oil & Gas Company* v. *Federal Power Com'n*, (C.A. 10, 1957) 250 F.2d 61, Cert. Den. 355 U.S. 956, 2 L. Ed. 2d 532, 78 S. Ct. 542, that Court had under consideration the wellhead sale of natural gas without the process of gathering being involved. On page 68 of the opinion, that Court, after reviewing previous cases of this Court, determined this Court referred to Phillips

> "* * * as holding that *the production or gathering exemption applies to the physical activities, facilities, and properties used in the production and gathering of natural gas and not to the business of production and gathering*. Until there is a sale of the natural gas produced by such operations and installations in interstate commerce for resale, they are exempt. In the event of such a sale the jurisdiction of the Commission applies but only because of the sale and only to the extent that the Natural Gas Act confers jurisdiction." (Emphasis supplied.)

In this litigation wellhead sales of natural gas, as well as sales made after production and gathering, are involved, and were by dedication under long term contracts so involved and taking place years before the orders in question in this litigation were issued. Fixing the market demand for such gas or the allowable production thereof under the circumstances here presented is not a physical activity. It deals specifically with the "*business*" of the "*marketing and sale*" of such natural gas. See *Harper Oil Company*

v. *Federal Power Commission*, (C.A. 10, 1960) 284 F.2d 137, at page 139, where the Court said:

> "It would thus seem clear that when once an independent producer of gas has dedicated his production to interstate commerce and thereby has come under the jurisdiction of the Commission (F.P.C.), he remains thereunder so long as production continues." (Parenthetical insert supplied.)

Cf. *Sunray Mid-Continent Oil Co.* v. *F.P.C.* 364 U.S. 137, 156, 4 L. Ed. 2d 1623, 80 S. Ct. 1392, 1403.

The jurisdictional grant to the F.P.C. under Section 1(b) of the Natural Gas Act is written in plain, positive, and understandable language. It says:

> "The provisions of this chapter shall apply to *the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use, and to natural-gas companies engaged in such transportation or sale* * * *." (Emphasis supplied.)

Assuming, as we do, that the F.P.C. in the light of its expertise is qualified to speak concerning the withdrawal of gas from a well and whether it constitutes production or not, we refer again to page 25 of its brief on the merits in *Northern*, *supra*, namely,

> "The natural gas industry differs from other industries in that the production of the commodity (i.e., the withdrawal of gas from the well) and its movement into interstate channels constitute one and the same physical operation. Thus a regulation limiting (in these cases increasing) the volume a pipe line may (must in order to protect itself) purchase from a given well would be tantamount in effect to a limitation (here forcing an increase) upon the production of that well." (Parenthetical inserts supplied.)

We reiterate the operative effect of the orders here in question directly and adversely affects the sale and transportation of natural gas in interstate commerce for resale and therefore the orders threaten the comprehensive scheme of federal regulation.

IV

Federal Power Commission Has Misconstrued the Decisions of This Court

In *Northern*, *supra*, suggestion was made to this Court by the Federal Power Commission that if the Court should hold, as it subsequently did hold, that the orders invalidly invaded the federal regulatory jurisdiction, that the judgment should not be reversed but the case should be remanded to the Kansas Supreme Court for further consideration; the theory behind the suggestion being that the Supreme Court of Kansas might in the light of this Court's holding, then have the opportunity of holding that the orders effected a modification of the Republic "A" contract such as to permit performance of the contract through takings from the Republic wells in such lower amounts as might be necessary to achieve ratability with the takings from the wells of appellant's other producers (page 96 of the opinion). The Court said further:

> "In short, the suggestion is that the state court, if afforded the opportunity, might now so harmonize the Republic contract with the Commission's order *that there would result no measurable effect upon interstate transmissions or sales*." (Emphasis supplied.) (Id.)

The Court then said:

> "We reject this suggestion for several reasons."

It set out its reasons and in closing its discussion of the case held, on pages 97-98:

"In any event the suggestion misconceives the true nature of the question which the Kansas Supreme Court and this Court were called upon to decide. The federal question does not arise from an asserted actual and immediate conflict between the federal and state regulations. The question is whether the state orders may stand in the face of the pervasive scope of federal occupation of the field. Cf. San Diego Bldg. Trades Council v. Garmon, supra (359 U.S. at 241-244). Indeed, even if the issue of the accommodation of the Republic "A" contract with the orders had been actually framed in the lawsuit, *the mere fact that the Kansas Court might make the suggested accommodation would not necessarily permit the Kansas court or this Court to avoid decisions of the federal question, since even then it would have to be determined whether the orders invalidly jeopardize the Natural Gas Act's objective of uniformity.* See Federal Power Com. v. Transcontinental Gas Pipe Line Corp., supra (365 U.S. at 28). For, if the federal question could be avoided or postponed just short of actual collision, by ad hoc accommodation on the part of every State, then the scope of federal regulatory power would vary in accordance with the kaleidescopic variations of local contract law." (Emphasis supplied.)

It is clear therefore that this Court does have jurisdiction of these appeals and should exercise the same. To use the language of this Court on page 91 of *Northern, supra*, it must be said:

"These state orders necessarily deal with matters which directly affect the ability of the Federal Power Commission to regulate comprehensively and effectively the transportation and sale of natural gas, and to achieve the uniformity of regulation which was an objective of the Natural Gas Act. They therefore invalidly invade the federal agency's exclusive domain."

To be considered in this litigation is the fact that the Hugoton Gas Field is an interstate common source of supply. It is regulated in part by the Railroad Commission of Texas, in part by the Corporation Commission of Oklahoma, and in part by the Corporation Commission of Kansas. The same pipelines and purchasers do not serve all portions of this immense tri-state gas field. The market requirements of the respective pipeline purchasers vary, as well as the capacity of their lines. We note that the Federal Power Commission on page 8 of its brief in this litigation has this to say concerning this tri-state field:

> "Indeed, the only system of regulation calculated to eliminate that possibility altogether (interstate drainage) would be one which either imposed a uniform rate of production upon all wells in the field or which prescribed as a ceiling for all wells the lowest rate of production achieved by any of them. Appellants do not urge that such drastic regulation is constitutionally mandatory, but neither do they suggest any criteria for determining at what point the amount of probable drainage tolerated by the Commission's orders becomes, for constitutional purposes, excessive." (Parenthetical insert supplied.)

Appellants certainly do not here urge granting jurisdiction over proration of this tri-state field to the Federal Power Commission.[6] Appellants do suggest, however, as evidenced by the position taken in the respective jurisdictional statements, that the State of Kansas be not allowed, under the guise of regulating production, to extrapolate its jurisdiction into a field already occupied by Congress under the Natural Gas Act. To do so would immediately encourage Oklahoma and Texas to do like-

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6. Cf. *Federal Power Com. v. Transcontinental Gas Pipe Line Corp.*, 365 U. S. 1, 19, 20, 5 L. Ed. 2d 377, 389, 390, 81 S. Ct. 435.

wise and another race between the states, as in the price fixing legislation recently struck down by this Court, would result in the abrogation of the comprehensive and effective regulatory scheme of the Natural Gas Act and consequent detriment to the ultimate consumers of natural gas.

We respectfully reiterate that the federal questions propounded by these appeals are substantial and warrant plenary consideration by this Court.

Respectfully submitted.

CONRAD C. MOUNT
CHARLES V. WHEELER
*GEORGE E. PEABODY
P. O. Box 1995
Oklahoma City, Oklahoma

*MARK H. ADAMS
MARK H. ADAMS, II
503 Colorado Derby Bldg.
Wichita, Kansas

Attorneys for Appellant, Cities Service Gas Company

F. VINSON ROACH
JACK C. OSBORNE
*PATRICK J. McCARTHY
2223 Dodge Street
Omaha, Nebraska

*MARK H. ADAMS
MARK H. ADAMS, II
JOE ROLSTON
503 Colorado Derby Bldg.
Wichita, Kansas

Attorneys for Appellant, Northern Natural Gas Company

JAMES D. CONWAY
*ELMER J. JACKSON
Hastings, Nebraska

MARK H. ADAMS
MARK H. ADAMS, II
JOE ROLSTON
503 Colorado Derby Building
Wichita, Kansas

Attorneys for Appellant, Kansas-Nebraska Natural Gas Company, Inc.

*Attorneys upon whom service should be made

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Nos. 75, 83, 140

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1964

COLORADO INTERSTATE GAS COMPANY, *Appellant*,

vs.

THE STATE CORPORATION COMMISSION OF THE STATE OF KANSAS, SOUTHWEST KANSAS ROYALTY OWNERS ASSOCIATION AND PANHANDLE EASTERN PIPE LINE COMPANY, *Appellees*.

NORTHERN NATURAL GAS COMPANY AND CITIES SERVICE GAS COMPANY, *Appellants*,

vs.

THE STATE CORPORATION COMMISSION OF THE STATE OF KANSAS, SOUTHWEST KANSAS ROYALTY OWNERS ASSOCIATION AND PANHANDLE EASTERN PIPE LINE COMPANY, *Appellees*.

KANSAS-NEBRASKA NATURAL GAS COMPANY, INC., *Appellant*,

vs.

THE STATE CORPORATION COMMISSION OF THE STATE OF KANSAS, SOUTHWEST KANSAS ROYALTY OWNERS ASSOCIATION AND PANHANDLE EASTERN PIPE LINE COMPANY, *Appellees*.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF KANSAS

RESPONSE OF APPELLEES STATE CORPORATION COMMISSION OF THE STATE OF KANSAS AND SOUTHWEST KANSAS ROYALTY OWNERS ASSOCIATION TO MEMORANDUM FOR THE FEDERAL POWER COMMISSION AS AMICUS CURIAE

*E. EDWARD JOHNSON, *General Counsel for State Corporation Commission of Kansas*, Topeka, Kansas,

RICHARD C. BYRD, *Special Counsel for State Corporation Commission of Kansas*,

*DALE M. STUCKY, *Counsel for Southwest Kansas Royalty Owners Association*.

Of Counsel:

ANDERSON & BYRD, Ottawa, Kansas,

KRAMER & NORDLING, Hugoton, Kansas,

FLEESON, GOOING, COULSON & KITCH, Wichita, Kansas.

*Attorneys upon whom service should be made.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1964

No. 75

COLORADO INTERSTATE GAS COMPANY, *Appellant*,

vs.

THE STATE CORPORATION COMMISSION OF THE STATE OF KANSAS, SOUTHWEST KANSAS ROYALTY OWNERS ASSOCIATION AND PANHANDLE EASTERN PIPE LINE COMPANY, *Appellees*.

No. 83

NORTHERN NATURAL GAS COMPANY AND CITIES SERVICE GAS COMPANY, *Appellants*,

vs.

THE STATE CORPORATION COMMISSION OF THE STATE OF KANSAS, SOUTHWEST KANSAS ROYALTY OWNERS ASSOCIATION AND PANHANDLE EASTERN PIPE LINE COMPANY, *Appellees*.

No. 140

KANSAS-NEBRASKA NATURAL GAS COMPANY, INC., *Appellant*,

vs.

THE STATE CORPORATION COMMISSION OF THE STATE OF KANSAS, SOUTHWEST KANSAS ROYALTY OWNERS ASSOCIATION AND PANHANDLE EASTERN PIPE LINE COMPANY, *Appellees*.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF KANSAS

RESPONSE OF APPELLEES STATE CORPORATION COMMISSION OF THE STATE OF KANSAS AND SOUTHWEST KANSAS ROYALTY OWNERS ASSOCIATION TO MEMORANDUM FOR THE FEDERAL POWER COMMISSION AS AMICUS CURIAE

The Solicitor General of the United States in his Memorandum on behalf of the Federal Power Commission as *amicus curiae* states the cases should be dismissed

This response is for the purpose of stating that the responding appellees are not only necessarily in accord with this ultimate conclusion, but also agree with the expressed rationale leading to this position.

The Solicitor General's careful analysis of the facts is a refreshing contrast to appellants' many statements which are both inaccurate and unsupported in the record.

The Memorandum completely destroys appellants' suggestions that the Kansas judicial and regulatory authorities are joined together in a conscious conspiracy designed to transgress federal jurisdiction.

Appellants' prolonged efforts to carve out a new regulatory no-man's-land under the pious guise of defending federal regulation, typified by such *ad hominem* arguments, are now fully exposed.

We respectfully submit that these appeals should be dismissed so that state and federal regulation can cooperatively proceed after eight years of hearings and litigation.

Respectfully submitted,

E. EDWARD JOHNSON, *General Counsel for State Corporation Commission of Kansas,*
Topeka, Kansas,
RICHARD C. BYRD, *Special Counsel for State Corporation Commission of Kansas,*
DALE M. STUCKY, *Counsel for Southwest Kansas Royalty Owners Association*

Of Counsel:
ANDERSON & BYRD, Ottawa, Kansas,
KRAMER & NORDLING, Hugoton, Kansas,
FLEESON, GOOING, COULSON & KITCH, Wichita, Kansas.

November, 1964

IN THE

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OCTOBER TERM, 1964

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NORTHERN NATURAL GAS COMPANY, a Corporation, and CITIES SERVICE GAS COMPANY, a Corporation,
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vs.

STATE CORPORATION COMMISSION OF THE STATE OF KANSAS et al.,
Appellees.

KANSAS-NEBRASKA NATURAL GAS COMPANY, INC., a Corporation,
Appellant,

vs.

STATE CORPORATION COMMISSION OF THE STATE OF KANSAS et al.,
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ON APPEAL FROM THE SUPREME COURT OF THE STATE OF KANSAS

APPELLANTS' JOINT APPLICATION TO EXTEND TIME WITHIN WHICH TO FILE PETITIONS FOR REHEARING IN THESE APPEALS

CONRAD C. MOUNT
CHARLES V. WHEELER
*GEORGE E. PEABODY
P. O. Box 1995
Oklahoma City, Oklahoma

*MARK H. ADAMS
MARK H. ADAMS, II
503 Colorado Derby Bldg.
Wichita, Kansas

Attorneys for Appellant, Cities Service Gas Company

JAMES D. CONWAY
*ELMER J. JACKSON
Hastings, Nebraska

F. VINSON ROACH
JACK C. OSBORNE
*PATRICK J. McCARTHY
2223 Dodge Street
Omaha, Nebraska

*MARK H. ADAMS
MARK H. ADAMS, II
JOE ROLSTON
503 Colorado Derby Bldg.
Wichita, Kansas

Attorneys for Appellant, Northern Natural Gas Company

*MARK H. ADAMS
MARK H. ADAMS, II
JOE ROLSTON
503 Colorado Derby Bldg.
Wichita, Kansas

Attorneys for Appellant, Kansas-Nebraska Natural Gas Company, Inc.

*Attorneys upon whom service should be made.

December 7, 1964

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1964

Nos. 83 and 140

NORTHERN NATURAL GAS COMPANY, a Corporation, and CITIES SERVICE GAS COMPANY, a Corporation,
Appellants,

vs.

STATE CORPORATION COMMISSION OF THE STATE OF KANSAS et al.,
Appellees.

KANSAS-NEBRASKA NATURAL GAS COMPANY, INC., a Corporation,
Appellant,

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STATE CORPORATION COMMISSION OF THE STATE OF KANSAS et al.,
Appellees.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF KANSAS

APPELLANTS' JOINT APPLICATION TO EXTEND TIME WITHIN WHICH TO FILE PETITIONS FOR REHEARING IN THESE APPEALS

To: THE UNITED STATES SUPREME COURT AND THE JUSTICES THEREOF:

Appellants above named do hereby jointly apply and respectfully request that the time within which each of the

named appellants may file and serve a petition for rehearing herein in accordance with Rule 58 of this Court, be extended from December 18, 1964, to and including January 18, 1961, premised on the following considerations:

(a) Appellants construe the Court's per curiam decisional judgment of dismissal entered November 23, 1964 (granting appellees' motions to dismiss "for want of jurisdiction" without specifying any of the reasons set forth in such motions) or in the alternative denying certiorari to mean that such appeals are premature in that no actual and immediate conflict between Federal and State regulatory authority has yet developed, because at this time the Kansas Commission has restored certain of the underages of appellants theretofore lost by cancellation and extended the time to run such underages until December 31, 1964, thereby showing these appellants have presently suffered no actual and immediate detriment from said Commission's orders.

(b) On Page 6 of the Federal Power Commission's Memorandum it is stated:

> "* * * the change in determining allowables has resulted in a large accumulation of underages, many of which have been cancelled. In December 1963, however, the Kansas Commission entered an order providing that no underages would be cancelled in 1964 and that underages previously cancelled would be reinstated upon application showing that the wells are capable of producing the amounts in question and that the purchaser will take such amounts, provided that the amounts so restored are run within the twelve-month period following reinstatement."

(c) Such order and moratorium will expire December 31, 1964. Since the issuance of said order and during the month of November, 1964, another hearing was held

by said Kansas Commission whereat it was shown that due to the enormity of such underages the same could not be run within said twelve-month period following the reinstatement thereof. At least half of such reinstated underages have not yet been run. Said Commission, after hearing evidence adduced at said hearing, and being fully advised in the premises, took the disposition of the matter under advisement—whether to further extend the allowed time for the running of such reinstated underages and extend the moratorium, or simply to cancel them wholesale on January 1, 1965. No ruling to this date has been made by the Kansas Commission in such docket. By reason of the provisions of said order as heretofore entered by said Kansas Commission the remaining unrun reinstated underages will be automatically cancelled and lost to the wells connected to the pipe line systems of these appellants unless action is taken by the Kansas Commission before December 31, 1964, extending the period for running the same.

(d) The Federal Power Commission, on Page 11 of its Memorandum herein, states:

> "In any event, even if the 'cancellation' issue were otherwise substantial, there would be no occasion for the Court to entertain it at this time. As noted, the Kansas Commission has declared a moratorium upon the further cancellation of underages and has announced that any underages previously cancelled will be reinstated under said conditions. As yet, therefore, none of the appellants *has irrevocably lost any of its underages.*"

(e) Appellants' time for filing petitions for rehearing herein will expire December 18, 1964, unless extended as applied for here. If this application for extension be not granted it is possible that the Kansas Commission

may refuse to allow further and sufficient extension of said moratorium and time to run such reinstated underages and thereby cause actual and immediate substantial detriment to these appellants from the loss of such cancelled underages, thereby impairing the reserves dedicated to appellants by their respective producers, which would result in an actual conflict with the regulatory jurisdiction of the Federal Power Commission. *Harper Oil Company* v. *Federal Power Commission*, (C.A. 10, 1960) 284 F.2d 137, 139. Cf. *Sunray Mid-Continent Oil Co.* v. *F.P.C.*, 364 U.S. 137, 156, 4 L. Ed. 2d 1623, 80 S. Ct. 1392, 1403.

Respectfully submitted,

JAMES D. CONWAY
*ELMER J. JACKSON
Hastings, Nebraska

*MARK H. ADAMS
MARK H. ADAMS, II
JOE ROLSTON
503 Colorado Derby Bldg.
Wichita, Kansas

Attorneys for Appellant, Kansas-Nebraska Natural Gas Company, Inc.

F. VINSON ROACH
JACK C. OSBORNE
*PATRICK J. MCCARTHY
2223 Dodge Street
Omaha, Nebraska

*MARK H. ADAMS
MARK H. ADAMS, II
JOE ROLSTON
503 Colorado Derby Bldg.
Wichita, Kansas

Attorneys for Appellant, Northern Natural Gas Company

CONRAD C. MOUNT
CHARLES V. WHEELER
*GEORGE E. PEABODY
P. O. Box 1995
Oklahoma City, Oklahoma

*MARK H. ADAMS
MARK H. ADAMS, II
503 Colorado Derby Bldg.
Wichita, Kansas

Attorneys for Appellant, Cities Service Gas Company

*Attorneys upon whom service should be made

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